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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1994

BEGINNING OF TERM

OCTOBER 3, 1994, THROUGH FEBRUARY 28, 1995

TOGETHER WITH OPINIONS OF INDIVIDUAL JUSTICES IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

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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.

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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.)

TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the United States Code are to the 1988 edition.

Cases reported before page 801 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 801 *et seq.* are those in which orders were entered. Opinions reported on page 1301 *et seq.* are those written in chambers by individual Justices.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1994

IN RE WHITAKER

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 93–9220. Decided October 11, 1994

Since 1987, *pro se* petitioner Whitaker has filed 23 claims for relief, all of which have been denied without recorded dissent. He has also been denied leave to proceed *in forma pauperis*, pursuant to this Court's Rule 39.8, for the last two petitions in which he has sought extraordinary relief.

Held: Whitaker is denied leave to proceed *in forma pauperis* in the instant case, and the Clerk is instructed not to accept any further petitions for extraordinary writs from him in noncriminal matters unless he pays the required docketing fee and submits his petitions in compliance with Rule 33. In order to prevent frivolous petitions for extraordinary relief from unsettling the fair administration of justice, this Court has a duty to deny *in forma pauperis* status to those individuals who have abused the system. *In re Sindram*, 498 U. S. 177, 179–180.

Motion denied.

PER CURIAM.

Pro se petitioner Fred Whitaker filed a petition for writ of mandamus and requests permission to proceed *in forma pauperis* under this Court's Rule 39. Pursuant to Rule 39.8,

we deny petitioner leave to proceed *in forma pauperis.** Petitioner is allowed until November 1, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit a petition for a writ of prohibition in compliance with Rule 33 of the Rules of this Court. For the reasons explained below, we also direct the Clerk of the Court not to accept any further petitions for extraordinary writs from petitioner in noncriminal matters unless he pays the docketing fee required by Rule 38(a) and submits his petition in compliance with Rule 33.

Since 1987, petitioner has filed 23 claims for relief, including 18 petitions for certiorari, 9 of which have been filed in the last three Terms. That total also includes five petitions for extraordinary writs filed since June 1992. We have denied all of the petitions without recorded dissent. We have also denied petitioner leave to proceed *in forma pauperis* pursuant to Rule 39.8 for the last two petitions in which he has sought extraordinary relief. *In re Whitaker*, 511 U. S. 1105 (1994); *In re Whitaker*, 506 U. S. 983 (1992).

Petitioner's current claim involves a civil action brought in the Alameda, California, Superior Court against Lake Merritt Lodge & Residence, alleging damages of $2 in illegal taxes. His legal arguments here are just as frivolous as those he has made in previous petitions.

Although petitioner has exhibited frequent filing patterns with respect to petitions for writ of certiorari, we limit our sanctions at this time to the type of relief requested today—styled as petitions for extraordinary writs. We have imposed similar sanctions in the past. See, *e. g.*, *In re Anderson*, 511 U. S. 364 (1994); *In re Demos*, 500 U. S. 16 (1991); *In*

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*Rule 39.8 provides: "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis*."

re Sindram, 498 U. S. 177 (1991); *In re McDonald*, 489 U. S. 180 (1989). As we concluded in *Sindram:*

> "The goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests. *Pro se* petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources because they are not subject to the financial considerations—filing fees and attorney's fees—that deter other litigants from filing frivolous petitions. The risks of abuse are particularly acute with respect to applications for extraordinary relief, since such petitions are not subject to any time limitations and, theoretically, could be filed at any time without limitation. In order to prevent frivolous petitions for extraordinary relief from unsettling the fair administration of justice, the Court has a duty to deny *in forma pauperis* status to those individuals who have abused the system." 498 U. S., at 179–180 (citation omitted).

JUSTICE STEVENS, dissenting.

Having already explained why the 1991 amendment to this Court's Rule 39 was both unnecessary and ill considered,[1] and having dissented from each of the dispositions cited by the Court today,[2] I would only add that I remain convinced that the views expressed in those dissents are correct. Given the current state of our docket, there is a peculiar irony in the Court's reliance, as a basis for singling out this

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[1] *In re Amendment to Rule 39*, 500 U. S. 13, 15 (1991) (dissenting opinion).

[2] See *In re Anderson*, 511 U. S. 364, 366 (1994); *In re Demos*, 500 U. S. 16, 17–19 (1991); *In re Sindram*, 498 U. S. 177, 180–183 (1991); *In re McDonald*, 489 U. S. 180, 185–188 (1989). See also *Day* v. *Day*, 510 U. S. 1, 3 (1993) (STEVENS, J., dissenting); *Talamini* v. *Allstate Ins. Co.*, 470 U. S. 1067, 1069–1072 (1985) (STEVENS, J., concurring).

petition for special treatment, on the supposed need to conserve its scarce resources so that it may achieve its "'goal of fairly dispensing justice,'" *ante*, at 3.

I respectfully dissent.

AUSTIN *v.* UNITED STATES

ON MOTION OF THOMAS N. COCHRAN FOR LEAVE TO WITHDRAW AS COUNSEL FOR PETITIONER

No. —. Decided October 31, 1994

Having determined that no meritorious grounds existed for an appeal of Anthony Austin's criminal conviction, Thomas Cochran, his appointed counsel, filed a brief in the Fourth Circuit raising only the issue of sentence computation. After the Fourth Circuit affirmed Austin's conviction and sentence, Cochran informed him of his right to petition for certiorari, but applied to this Court for leave to withdraw as counsel before the deadline for filing the petition.

Held: Cochran's application is granted. Under a plan adopted pursuant to the Criminal Justice Act (Act), the Fourth Circuit has a Rule governing the duration of service by appointed counsel. Cochran is correct that the Fourth Circuit Rule imposes a mandatory duty to file a petition even if the legal arguments are frivolous and, thus, conflicts with this Court's Rule 42.2, which allows an award of damages or costs against him for filing such a petition. Nothing in the Act compels counsel to file papers in contravention of this Court's Rules against frivolous filings. If necessary, the Circuits' Criminal Justice Plans should be revised to allow a lawyer to be relieved of the duty to file a petition for certiorari that would present only frivolous claims. The Act does not compel a particular approach. However, from an administrative point of view, it is preferable for a plan to require that the court of appeals approve a withdrawal, because attorneys are more likely to avail themselves of this avenue for relief if they have the court's endorsement to back up their own judgment.

Application granted.

PER CURIAM.

Anthony Austin pleaded guilty to possession of crack cocaine with intent to distribute and was sentenced to 151 months' imprisonment. On appeal to the Fourth Circuit, Thomas Cochran, who had been appointed as Austin's counsel pursuant to the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, submitted a brief in accordance with *Anders* v. *California*, 386 U. S. 738 (1967). That brief raised the issue of

sentence computation, but concluded that no meritorious issues existed for appeal. The Fourth Circuit affirmed Austin's conviction and sentence. Cochran then informed Austin of the right to petition for certiorari. Austin responded with a request to file a petition on his behalf. In advance of the deadline for filing the petition, Cochran applied to this Court for leave to withdraw as counsel. We grant his application.

The Criminal Justice Act directs each district court, with the approval of the judicial council of the Circuit, to implement "a plan for furnishing representation for any person financially unable to obtain adequate representation." 18 U. S. C. § 3006A(a). The Fourth Circuit plan contains a provision governing the duration of service by appointed counsel. Specifically, it provides:

> "2. *Appellate Counsel.* Every attorney, including retained counsel, who represents a defendant in this court shall continue to represent his client after termination of the appeal unless relieved of further responsibility by the Supreme Court. Where counsel has not been relieved:
>
> "If the judgment of this court is adverse to the defendant, counsel shall inform the defendant, in writing, of his right to petition the Supreme Court for a writ of certiorari. If the defendant, in writing, so requests, counsel shall prepare and file a timely petition for such a writ and transmit a copy to the defendant. Thereafter, unless otherwise instructed by the Supreme Court or its clerk, or unless any applicable rule, order or plan of the Supreme Court shall otherwise provide, counsel shall take whatever further steps are necessary to protect the rights of the defendant, until the petition is granted or denied." 4th Circuit Rules App. II, Rule V.2.

Cochran argues that the Rule subjects him to conflicting obligations. On the one hand, the Rule imposes a mandatory duty to file a petition even if the legal arguments are frivo-

lous. On the other hand, this Court's Rule 42.2 allows an award of damages or costs against him if he were to file a frivolous petition.

As a matter of pure text, Cochran's interpretation is correct. The Fourth Circuit Rule does require the actions of appointed counsel to comply with this Court's Rules, but only *after* the filing of a petition for certiorari. The Rule imposes a very clear mandate to file petitions at the client's request, evidenced by the command "shall prepare and file." The Fourth Circuit keeps plenty of company in mandating representation through the certiorari process, even when it may run counter to our Rules.[1] Although the Fourth Circuit Rule provides a mechanism to seek relief from this obligation, Cochran is the first attorney to move for such relief,[2] indicating that counsel feel encouraged or perhaps bound by these Rules to file petitions that rest on frivolous claims. These Circuit Rules may explain, in part, the dramatically increased number of petitions for certiorari on direct appeal from federal courts of appeals filed by persons *in forma pauperis*.[3]

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[1] See D. C. Circuit Rules App. VIII, Rule IV ("The duties of representation by counsel on appeal, where the appeal has been unsuccessful, shall extend to advising the party of the right to file a petition for writ of certiorari . . . . If the party so requests, counsel *shall* prepare and file such a petition") (emphasis added); 3d Circuit Rules Addendum B, Rule III.6 (same); 5th Circuit Rules App. C, Rule 4 (same); 7th Circuit Rules App. II, Rule V.3 (same); 8th Circuit Rules App. Rule V (same); 9th Circuit Rules App. A, § 4(c) (same); 10th Circuit Rules Addendum I, Rule II.D (same); 11th Circuit Rules Addendum 4(f)(4) (same).

[2] Since this Court received Cochran's motion, another attorney has filed a petition for certiorari raising the same issue. *Anderson* v. *United States,* No. 94–5958.

[3] For the October 1983 Term, we received 523 petitions for certiorari on direct review in criminal cases from *in forma pauperis* petitioners in federal courts. That number increased fourfold by the October 1993 Term with 2,053 petitions. That increase stands in contrast with the increase in criminal petitions on direct review from state courts—an increase of only 50% in that same 10-year period.

Consistent with the Criminal Justice Act, we have provided by Rule for the payment of counsel appointed by this Court to represent certain indigent defendants. See Rule 39.7 ("In a case in which certiorari has been granted or jurisdiction has been noted or postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, as amended, 18 U. S. C. § 3006A"). But nothing in the Criminal Justice Act compels counsel to file papers in contravention of this Court's Rules against frivolous filings. And though indigent defendants pursuing appeals as of right have a constitutional right to a brief filed on their behalf by an attorney, *Anders* v. *California, supra,* that right does not extend to forums for discretionary review. *Ross* v. *Moffitt,* 417 U. S. 600, 616–617 (1974). Our Rules dealing with the grounds for granting certiorari, and penalizing frivolous filings, apply equally to petitioners using appointed or retained counsel. We believe that the Circuit councils should, if necessary, revise their Criminal Justice Plans so that they do not create any conflict with our Rules. The plan should allow for relieving a lawyer of the duty to file a petition for certiorari if the petition would present only frivolous claims.

A few of the Circuits have adopted plans that accommodate this Court's Rules in some fashion. For instance, the First Circuit only requires appointed counsel to continue representation at the Supreme Court level if "the person requests it and there are reasonable grounds for counsel properly to do so." 1st Circuit Rule 46.5(c). If counsel determines a petition would be frivolous, he must inform the First Circuit and request leave to withdraw. See also 2d Circuit Rules App. A, Rule III.5. The Sixth Circuit takes a different tack, insulating counsel from violation of its Rules (though not, of course, from violation of our Rules) so long as he proceeds according to his best professional judgment, without resorting to the approval of the appellate court. Its recently amended Rule states: "Court appointed counsel is

obligated to file a petition for a writ of certiorari in the Supreme Court of the United States if the client requests that such a review be sought *and, in counsel's considered judgment, there are grounds for seeking Supreme Court review.*" 6th Circuit Rule 12(f) (emphasis in original). We do not believe that the Criminal Justice Act compels either approach. From an administrative point of view, however, we think a plan requiring approval of the court of appeals is preferable, because attorneys are more likely to avail themselves of this avenue for relief if they have the endorsement of the court to back up their own judgment.

Syllabus

UNITED STATES *v.* SHABANI

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

No. 93–981. Argued October 3, 1994—Decided November 1, 1994

Respondent Shabani was convicted of conspiracy to distribute cocaine in violation of 21 U. S. C. § 846 after the District Court refused to instruct the jury that proof of an overt act in furtherance of a narcotics conspiracy is required for conviction under § 846. The Court of Appeals reversed, holding that, under its precedent, the Government must prove at trial that a defendant has committed such an overt act.

Held: In order to establish a violation of § 846, the Government need not prove the commission of any overt acts in furtherance of the conspiracy. The statute's plain language does not require an overt act, and such a requirement has not been inferred from congressional silence in other conspiracy statutes, see, *e. g.*, *Nash* v. *United States*, 229 U. S. 373. Thus, absent contrary indications, it is presumed that Congress intended to adopt the common law definition of conspiracy, which "does not make the doing of any act other than the act of conspiring a condition of liability," *id.*, at 378. Moreover, since the general conspiracy statute and the conspiracy provision of the Organized Crime Control Act of 1970 both require an overt act, it appears that Congress' choice in § 846 was quite deliberate. *United States* v. *Felix*, 503 U. S. 378, distinguished. While Shabani correctly asserts that the law does not punish criminal thoughts, in a criminal conspiracy the criminal agreement itself is the *actus reus*. The rule of lenity cannot be invoked here, since the statute is not ambiguous. Pp. 13–17.

993 F. 2d 1419, reversed.

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

Richard H. Seamon argued the cause for the United States. With him on the briefs were *Solicitor General Days*, *Assistant Attorney General Harris*, and *Joseph Douglas Wilson*.

Dennis P. Riordan argued the cause for respondent. With him on the brief were *Alan M. Caplan* and *Marc J. Zilversmit*.

JUSTICE O'CONNOR delivered the opinion of the Court.

This case asks us to consider whether 21 U. S. C. § 846, the drug conspiracy statute, requires the Government to prove that a conspirator committed an overt act in furtherance of the conspiracy. We conclude that it does not.

I

According to the grand jury indictment, Reshat Shabani participated in a narcotics distribution scheme in Anchorage, Alaska, with his girlfriend, her family, and other associates. Shabani was allegedly the supplier of drugs, which he arranged to be smuggled from California. In an undercover operation, federal agents purchased cocaine from distributors involved in the conspiracy.

Shabani was charged with conspiracy to distribute cocaine in violation of 21 U. S. C. § 846. He moved to dismiss the indictment because it did not allege the commission of an overt act in furtherance of the conspiracy, which act, he argued, was an essential element of the offense. The United States District Court for the District of Alaska, Hon. H. Russel Holland, denied the motion, and the case proceeded to trial. At the close of evidence, Shabani again raised the issue and asked the court to instruct the jury that proof of an overt act was required for conviction. The District Court noted that Circuit precedent did not require the allegation of an overt act in the indictment but did require proof of such an act at trial in order to state a violation of § 846. Recognizing that such a result was "totally illogical," App. 29, and contrary to the language of the statute, Judge Holland rejected Shabani's proposed jury instruction, *id.*, at 36. The jury returned a guilty verdict, and the court sentenced Shabani to 160 months' imprisonment.

The United States Court of Appeals for the Ninth Circuit reversed. 993 F. 2d 1419 (1993). The court acknowledged an inconsistency between its cases holding that an indictment under § 846 need not allege an overt act and those re-

quiring proof of such an act at trial, and it noted that the latter cases "stand on weak ground." *Id.*, at 1420. Nevertheless, the court felt bound by precedent and attempted to reconcile the two lines of cases. The Court of Appeals reasoned that, although the Government must prove at trial that the defendant has committed an overt act in furtherance of a narcotics conspiracy, the act need not be alleged in the indictment because "'[c]ourts do not require as detailed a statement of an offense's elements under a conspiracy count as under a substantive count.'" *Id.*, at 1422, quoting *United States* v. *Tavelman*, 650 F. 2d 1133, 1137 (CA9 1981).

Chief Judge Wallace wrote separately to point out that in no other circumstance could the Government refrain from alleging in the indictment an element it had to prove at trial. He followed the Circuit precedent but invited the Court of Appeals to consider the question en banc because the Ninth Circuit, "contrary to every other circuit, clings to a problematic gloss on 21 U. S. C. § 846, insisting, despite a complete lack of textual support in the statute, that in order to convict under this section the government must prove the commission of an overt act in furtherance of the conspiracy." 993 F. 2d, at 1422 (concurring opinion). For reasons unknown, the Court of Appeals did not grant en banc review. We granted certiorari, 510 U. S. 1108 (1994), to resolve the conflict between the Ninth Circuit and the 11 other Circuits that have addressed the question, all of which have held that § 846 does not require proof of an overt act.*

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*See *United States* v. *Sassi*, 966 F. 2d 283, 285 (CA7), cert. denied, 506 U. S. 991 (1992); *United States* v. *Clark*, 928 F. 2d 639, 641 (CA4 1991); *United States* v. *Figueroa*, 900 F. 2d 1211, 1218 (CA8), cert. denied, 496 U. S. 942 (1990); *United States* v. *Paiva*, 892 F. 2d 148, 155 (CA1 1989); *United States* v. *Onick*, 889 F. 2d 1425, 1432 (CA5 1989); *United States* v. *Cochran*, 883 F. 2d 1012, 1017–1018 (CA11 1989); *United States* v. *Savaiano*, 843 F. 2d 1280, 1294 (CA10 1988); *United States* v. *Pumphrey*, 831 F. 2d 307, 308–309 (CADC 1987); *United States* v. *Bey*, 736 F. 2d 891, 894 (CA3 1984); *United States* v. *Dempsey*, 733 F. 2d 392, 396 (CA6),

II

Congress passed the drug conspiracy statute as § 406 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91–513, 84 Stat. 1236. It provided: "Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy." *Id.*, at 1265. As amended by the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, § 6470(a), 102 Stat. 4377, the statute currently provides: "Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy." 21 U. S. C. § 846. The language of neither version requires that an overt act be committed to further the conspiracy, and we have not inferred such a requirement from congressional silence in other conspiracy statutes. In *Nash* v. *United States*, 229 U. S. 373 (1913), Justice Holmes wrote, "[W]e can see no reason for reading into the Sherman Act more than we find there," *id.*, at 378, and the Court held that an overt act is not required for antitrust conspiracy liability. The same reasoning prompted our conclusion in *Singer* v. *United States*, 323 U. S. 338 (1945), that the Selective Service Act "does not require an overt act for the offense of conspiracy." *Id.*, at 340.

Nash and *Singer* follow the settled principle of statutory construction that, absent contrary indications, Congress intends to adopt the common law definition of statutory terms. See *Molzof* v. *United States*, 502 U. S. 301, 307–308 (1992). We have consistently held that the common law understand-

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cert. denied, 469 U. S. 983 (1984); *United States* v. *Knuckles*, 581 F. 2d 305, 311 (CA2), cert. denied, 439 U. S. 986 (1978).

ing of conspiracy "does not make the doing of any act other than the act of conspiring a condition of liability." *Nash*, *supra*, at 378; see also *Collins* v. *Hardyman*, 341 U. S. 651, 659 (1951); *Bannon* v. *United States*, 156 U. S. 464, 468 (1895) ("At common law it was neither necessary to aver nor prove an overt act in furtherance of the conspiracy . . ."). Respondent contends that these decisions were rendered in a period of unfettered expansion in the law of conspiracy, a period which allegedly ended when the Court declared that "we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions." *Grunewald* v. *United States*, 353 U. S. 391, 404 (1957) (citations omitted). *Grunewald*, however, was a statute of limitations case, and whatever exasperation with conspiracy prosecutions the opinion may have expressed in dictum says little about the views of Congress when it enacted § 846.

As to those views, we find it instructive that the general conspiracy statute, 18 U. S. C. § 371, contains an explicit requirement that a conspirator "do any act to effect the object of the conspiracy." In light of this additional element in the general conspiracy statute, Congress' silence in § 846 speaks volumes. After all, the general conspiracy statute preceded and presumably provided the framework for the more specific drug conspiracy statute. "*Nash* and *Singer* give Congress a formulary: by choosing a text modeled on § 371, it gets an overt-act requirement; by choosing a text modeled on the Sherman Act, 15 U. S. C. § 1, it dispenses with such a requirement." *United States* v. *Sassi*, 966 F. 2d 283, 284 (CA7 1992). Congress appears to have made the choice quite deliberately with respect to § 846; the same Congress that passed this provision also enacted the Organized Crime Control Act of 1970, Pub. L. 91–452, 84 Stat. 922, § 802(a) of which contains an explicit requirement that "one or more of [the conspirators] does any act to effect the object of such a conspiracy," *id.*, at 936, codified at 18 U. S. C. § 1511(a).

Early opinions in the Ninth Circuit dealing with the drug conspiracy statute simply relied on our precedents interpreting the general conspiracy statute and ignored the textual variations between the two provisions. See *United States* v. *Monroe*, 552 F. 2d 860, 862 (CA9), cert. denied, 431 U. S. 972 (1977), citing *United States* v. *Feola*, 420 U. S. 671 (1975); *United States* v. *Thompson*, 493 F. 2d 305, 310 (CA9), cert. denied, 419 U. S. 834 (1974), citing *United States* v. *Rabinowich*, 238 U. S. 78, 86–88 (1915). Two other Courts of Appeals were led down the same path, see *United States* v. *King*, 521 F. 2d 61, 63 (CA10 1975); *United States* v. *Hutchinson*, 488 F. 2d 484, 490 (CA8 1973), but both subsequently recognized the misstep and rejected their early interpretations, see *United States* v. *Covos*, 872 F. 2d 805, 810 (CA8 1989); *United States* v. *Savaiano*, 843 F. 2d 1280, 1294 (CA10 1988).

What the Ninth Circuit failed to recognize we now make explicit: In order to establish a violation of 21 U. S. C. § 846, the Government need not prove the commission of any overt acts in furtherance of the conspiracy. *United States* v. *Felix*, 503 U. S. 378 (1992), is not to the contrary. In that case, an indictment under § 846 alleged two overt acts which had formed the basis of the defendant's prior conviction for attempting to manufacture drugs. The defendant argued that the Government had violated the Double Jeopardy Clause and *Grady* v. *Corbin*, 495 U. S. 508 (1990), overruled, *United States* v. *Dixon*, 509 U. S. 688 (1993), by using evidence underlying the prior conviction "to prove an essential element of an offense" charged in the second prosecution. We held that the Double Jeopardy Clause did not bar the conspiracy charge. JUSTICE STEVENS, writing separately, thought that our double jeopardy discussion was unnecessary partly because "there is no overt act requirement in the federal drug conspiracy statute," *Felix*, *supra*, at 392 (STEVENS, J., concurring in part and concurring in judgment). Shabani argues that, by not responding to this point, the Court im-

plicitly held that § 846 requires proof of overt acts; otherwise, the double jeopardy discussion would have been merely advisory. The procedural history of *Felix,* however, belies this contention. The disputed evidence was offered not to prove overt acts *qua* overt acts, but to prove the existence of a conspiracy. The lower court in *Felix* noted that it was "mindful that 21 U. S. C. § 846 does not require proof of an overt act . . . ." *United States* v. *Felix,* 926 F. 2d 1522, 1529, n. 7 (CA10 1991). Nevertheless, evidence of such acts raised double jeopardy concerns because it "tended to show the criminal agreement for the conspiracy," an indisputably essential element of the offense. *Ibid.* Indeed, JUSTICE STEVENS also argued that "the overt acts did not establish an agreement between Felix and his co-conspirators." *Felix,* 503 U. S., at 392. In light of the lower court opinion, it is apparent that we rejected this point—rather than JUSTICE STEVENS' construction of § 846—before reaching the double jeopardy issue. In any event, Shabani's strained reading of *Felix* is of little consequence for precedential purposes, since "[q]uestions which 'merely lurk in the record' are not resolved, and no resolution of them may be inferred." *Illinois Bd. of Elections* v. *Socialist Workers Party,* 440 U. S. 173, 183 (1979), quoting *Webster* v. *Fall,* 266 U. S. 507, 511 (1925).

Shabani reminds us that the law does not punish criminal thoughts and contends that conspiracy without an overt act requirement violates this principle because the offense is predominantly mental in composition. The prohibition against criminal conspiracy, however, does not punish mere thought; the criminal agreement itself is the *actus reus* and has been so viewed since *Regina* v. *Bass,* 11 Mod. 55, 88 Eng. Rep. 881, 882 (K. B. 1705) ("[T]he very assembling together was an overt act"); see also *Iannelli* v. *United States,* 420 U. S. 770, 777 (1975) ("Conspiracy is an inchoate offense, the essence of which is an agreement to commit an unlawful act") (citations omitted).

Finally, Shabani invokes the rule of lenity, arguing that the statute is unclear because it neither requires an overt act nor specifies that one is not necessary. The rule of lenity, however, applies only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute. See, *e. g.*, *Beecham* v. *United States*, 511 U. S. 368, 374 (1994); *Smith* v. *United States*, 508 U. S. 223, 239–241 (1993). That is not the case here. To require that Congress explicitly state its intention *not* to adopt petitioner's reading would make the rule applicable with the "mere possibility of articulating a narrower construction," *id.*, at 239, a result supported by neither lenity nor logic.

As the District Court correctly noted in this case, the plain language of the statute and settled interpretive principles reveal that proof of an overt act is not required to establish a violation of 21 U. S. C. § 846. Accordingly, the judgment of the Court of Appeals is

Reversed.

Syllabus

U. S. BANCORP MORTGAGE CO. *v.* BONNER MALL PARTNERSHIP

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

No. 93–714. Argued October 4, 1994—Decided November 8, 1994

After this Court granted the petition for a writ of certiorari and received briefing on the merits, the parties entered into a settlement and agreed that the case was thereby mooted. Petitioner, however, also requested that the Court exercise its power under 28 U. S. C. § 2106 to vacate the judgment of the Court of Appeals. Respondent opposed the motion.

Held:

1. This Court does not lack the power to entertain petitioner's motion to vacate. Section 2106 supplies the vacatur power, and respondent's suggestion is rejected that Article III's case or controversy requirement *prohibits* the exercise of that power when no live dispute exists due to a settlement that has mooted the case. Although Article III prevents the Court from considering the merits of a judgment that has become moot while awaiting review, the Court may nevertheless make such disposition of the whole case as justice may require. *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671, 677. Pp. 20–22.

2. Mootness by reason of settlement does not justify vacatur of a federal civil judgment under review. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39–40, and subsequent cases distinguished. Equitable principles have always been implicit in this Court's exercise of the vacatur power, and the principal equitable factor to which the Court has looked is whether the party seeking vacatur caused the mootness by voluntary action. Where mootness results from settlement, the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the extraordinary equitable remedy of vacatur. It is irrelevant that the party who won below also agreed to the settlement, since it is the losing party who has the burden of demonstrating equitable entitlement to vacatur. This result is supported by the public interest in the orderly operation of the federal judicial system; petitioner's countervailing policy arguments are not persuasive. Although exceptional circumstances may conceivably justify vacatur when mootness results from settlement, such circumstances do not include the mere fact that the settlement agreement provides for vacatur. Pp. 22–29.

Motion to vacate denied and case dismissed as moot. Reported below: 2 F. 3d 899.

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

Brandford Anderson argued the cause for petitioner. With him on the briefs were *Dale G. Higer* and *David B. Levant.*

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Days, Assistant Attorney General Hunger, Ronald J. Mann, Leonard Schaitman,* and *John P. Schnitker.*

John Ford Elsaesser, Jr., argued the cause for respondent. With him on the brief were *Isaac M. Pachulski, K. John Shaffer,* and *Barbara Buchanan.**

JUSTICE SCALIA delivered the opinion of the Court.

The question in this case is whether appellate courts in the federal system should vacate civil judgments of subordinate courts in cases that are settled after appeal is filed or certiorari sought.

I

In 1984 and 1985, Northtown Investments built the Bonner Mall in Bonner County, Idaho, with financing from a bank in that State. In 1986, respondent Bonner Mall Partnership (Bonner) acquired the mall, while petitioner U. S. Bancorp Mortgage Co. (Bancorp) acquired the loan and mortgage from the Idaho bank. In 1990, Bonner defaulted on its real estate taxes and Bancorp scheduled a foreclosure sale.

The day before the sale, Bonner filed a petition under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.*,

*Briefs of *amici curiae* were filed for Izumi Seimitsu Kogyo Kabushiki Kaisha et al. by *Herbert H. Mintz, Robert D. Litowitz, Jean Burke Fordis, David S. Forman,* and *William L. Androlia;* and for Trial Lawyers for Public Justice, P. C., by *Jill E. Fisch, Arthur H. Bryant,* and *Leslie A. Brueckner.*

in the United States Bankruptcy Court for the District of Idaho. It filed a reorganization plan that depended on the "new value exception" to the absolute priority rule.[1] Bancorp moved to suspend the automatic stay of its foreclosure imposed by 11 U. S. C. § 362(a), arguing that Bonner's plan was unconfirmable as a matter of law for a number of reasons, including unavailability of the new value exception. The Bankruptcy Court eventually granted the motion, concluding that the new value exception had not survived enactment of the Bankruptcy Code. The court stayed its order pending an appeal by Bonner. The United States District Court for the District of Idaho reversed, *In re Bonner Mall Partnership*, 142 B. R. 911 (1992); Bancorp took an appeal in turn, but the Court of Appeals for the Ninth Circuit affirmed, *In re Bonner Mall Partnership*, 2 F. 3d 899 (1993).

Bancorp then petitioned for a writ of certiorari. After we granted the petition, 510 U. S. 1039 (1994), and received briefing on the merits, Bancorp and Bonner stipulated to a consensual plan of reorganization, which received the approval of the Bankruptcy Court. The parties agreed that confirmation of the plan constituted a settlement that mooted the case. Bancorp, however, also requested that we exercise our power under 28 U. S. C. § 2106 to vacate the judgment of the Court of Appeals. Bonner opposed the motion. We set the vacatur question for briefing and argument. 511 U. S. 1002–1003 (1994).

II

Respondent questions our power to entertain petitioner's motion to vacate, suggesting that the limitations on the judi-

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[1] As described by the Court of Appeals for the Ninth Circuit, the new value exception "allows the shareholders of a corporation in bankruptcy to obtain an interest in the reorganized debtor in exchange for new capital contributions over the objections of a class of creditors that has not received full payment on its claims." *In re Bonner Mall Partnership*, 2 F. 3d 899, 901 (1993). We express no view on the existence of such an exception under the Bankruptcy Code.

cial power conferred by Article III, see U. S. Const., Art. III, § 1, "may, at least in some cases, *prohibit* an act of vacatur when no live dispute exists due to a settlement that has rendered a case moot." Brief for Respondent 21 (emphasis in original).

The statute that supplies the power of vacatur provides:

> "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." 28 U. S. C. § 2106.

Of course, no statute could authorize a federal court to decide the merits of a legal question not posed in an Article III case or controversy. For that purpose, a case must exist at all the stages of appellate review. *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975); *Mills* v. *Green*, 159 U. S. 651, 653 (1895). But reason and authority refute the quite different notion that a federal appellate court may not take any action with regard to a piece of litigation once it has been determined that the requirements of Article III no longer are (or indeed never were) met. That proposition is contradicted whenever an appellate court holds that a district court lacked Article III jurisdiction in the first instance, vacates the decision, and remands with directions to dismiss. In cases that become moot while awaiting review, respondent's logic would hold the Court powerless to award costs, *e. g.*, *Heitmuller* v. *Stokes*, 256 U. S. 359, 362–363 (1921), or even to enter an order of dismissal.

Article III does not prescribe such paralysis. "If a judgment has become moot [while awaiting review], this Court may not consider its merits, but may make such disposition of the whole case as justice may require." *Walling* v. *James*

V. Reuter, Inc., 321 U. S. 671, 677 (1944). As with other matters of judicial administration and practice "reasonably ancillary to the primary, dispute-deciding function" of the federal courts, *Chandler* v. *Judicial Council of Tenth Circuit*, 398 U. S. 74, 111 (1970) (Harlan, J., concurring in denial of writ), Congress may authorize us to enter orders necessary and appropriate to the final disposition of a suit that is before us for review. See *Mistretta* v. *United States*, 488 U. S. 361, 389–390 (1989); see also *id.*, at 417 (SCALIA, J., dissenting).

III

The leading case on vacatur is *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950), in which the United States sought injunctive and monetary relief for violation of a price control regulation. The damages claim was held in abeyance pending a decision on the injunction. The District Court held that the respondent's prices complied with the regulations and dismissed the complaint. While the United States' appeal was pending, the commodity at issue was decontrolled; at the respondent's request, the case was dismissed as moot, a disposition in which the United States acquiesced. The respondent then obtained dismissal of the damages action on the ground of res judicata, and we took the case to review that ruling. The United States protested the unfairness of according preclusive effect to a decision that it had tried to appeal but could not. We saw no such unfairness, reasoning that the United States should have asked the Court of Appeals to vacate the District Court's decision before the appeal was dismissed. We stated that "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id.*, at 39. We explained that vacatur "clears the path for future relitigation of the issues between the parties and eliminates a judgment, re-

view of which was prevented through happenstance." *Id.*, at 40. Finding that the United States had "slept on its rights," *id.*, at 41, we affirmed.

The parties in the present case agree that vacatur must be decreed for those judgments whose review is, in the words of *Munsingwear*, "'prevented through happenstance'"—that is to say, where a controversy presented for review has "become moot due to circumstances unattributable to any of the parties." *Karcher* v. *May*, 484 U. S. 72, 82, 83 (1987). They also agree that vacatur must be granted where mootness results from the unilateral action of the party who prevailed in the lower court. The contested question is whether courts should vacate where mootness results from a settlement. The centerpiece of petitioner's argument is that the *Munsingwear* procedure has already been held to apply in such cases. *Munsingwear*'s description of the "established practice" (the argument runs) drew no distinctions between categories of moot cases; opinions in later cases granting vacatur have reiterated the breadth of the rule, see, *e. g.*, *Great Western Sugar Co.* v. *Nelson*, 442 U. S. 92, 93 (1979) *(per curiam);* and at least some of those cases specifically involved mootness by reason of settlement, see, *e. g.*, *Lake Coal Co.* v. *Roberts & Schaeffer Co.*, 474 U. S. 120 (1985) *(per curiam).*

But *Munsingwear*, and the post-*Munsingwear* practice, cannot bear the weight of the present case. To begin with, the portion of Justice Douglas' opinion in *Munsingwear* describing the "established practice" for vacatur was dictum; all that was needful for the decision was (at most) the proposition that vacatur should have been sought, not that it necessarily would have been granted. Moreover, as *Munsingwear* itself acknowledged, see 340 U. S., at 40, n. 2, the "established practice" (in addition to being unconsidered) was not entirely uniform, at least three cases having been dismissed for mootness without vacatur within the four Terms preceding *Munsingwear.* See, *e. g.*, *Schenley Distilling Corp.* v. *Anderson*, 333 U. S. 878 (1948) *(per curiam).*

Nor has the post-*Munsingwear* practice been as uniform as petitioner claims. See, *e. g.*, *Allen & Co.* v. *Pacific Dunlop Holdings, Inc.*, 510 U. S. 1160 (1994); *Minnesota Newspaper Assn., Inc.* v. *Postmaster General*, 488 U. S. 998 (1989); *St. Luke's Federation of Nurses and Health Professionals* v. *Presbyterian/St. Lukes Medical Center*, 459 U. S. 1025 (1982).[2] Of course all of those decisions, both granting vacatur and denying it, were *per curiam*, with the single exception of *Karcher* v. *May*, *supra*, in which we declined to vacate. This seems to us a prime occasion for invoking our customary refusal to be bound by dicta, *e. g.*, *McCray* v. *Illinois*, 386 U. S. 300, 312, n. 11 (1967), and our customary skepticism toward *per curiam* dispositions that lack the reasoned consideration of a full opinion, see *Edelman* v. *Jordan*, 415 U. S. 651, 670–671 (1974). Today we examine vacatur once more in the light shed by adversary presentation.

The principles that have always been implicit in our treatment of moot cases counsel against extending *Munsingwear* to settlement. From the beginning we have disposed of moot cases in the manner "'most consonant to justice' . . . in view of the nature and character of the conditions which have caused the case to become moot." *United States* v. *Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U. S. 466, 477–478 (1916) (quoting *South Spring Hill Gold Mining Co.* v. *Amador Medean Gold Mining Co.*, 145 U. S. 300, 302 (1892)). The principal condition to which we have looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action. See *Hamburg-Amerikanische*, *supra*, at 478 (remanding a moot case for dismissal because "the ends of justice exact

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[2] The Solicitor General, who has filed an *amicus* brief in support of petitioner, would apparently distinguish these unvacated cases on the ground that the dismissal was pursuant to this Court's Rule 46.1 (or its predecessor), which provides for dismissal when "all parties . . . agre[e]." But such an exception to vacatur for mootness is not mentioned in *Munsingwear;* nor, we may add, do we see any reason of policy to commend it.

that the judgment below should not be permitted to stand when without any fault of the [petitioner] there is no power to review it upon the merits"); *Heitmuller* v. *Stokes*, 256 U. S., at 362 (remanding for dismissal because "without fault of the plaintiff in error, the defendant in error, after the proceedings below, . . . caus[ed] the case to become moot").

The reference to "happenstance" in *Munsingwear* must be understood as an allusion to this equitable tradition of vacatur. A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.[3] See *Hamburg-Amerikanische*, *supra*, at 477–478. The same is true when mootness results from unilateral action of the party who prevailed below. See *Walling*, 321 U. S., at 675; *Heitmuller*, *supra*, at 362. Where mootness results from settlement, however, the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur. The judgment is not unreviewable, but simply unreviewed by his own choice. The denial of vacatur is merely one application of the principle that "[a] suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks." *Sanders* v. *United States*, 373 U. S. 1, 17 (1963) (citing *Fay* v. *Noia*, 372 U. S. 391, 438 (1963)).

In these respects the case stands no differently than it would if jurisdiction were lacking because the losing party failed to appeal at all. In *Karcher* v. *May*, *supra*, two state

[3] We thus stand by *Munsingwear*'s dictum that mootness by happenstance provides sufficient reason to vacate. Whether that principle was correctly applied to the circumstances of that case is another matter. The suit for injunctive relief in *Munsingwear* became moot on appeal because the regulations sought to be enforced by the United States were annulled by Executive Order. See *Fleming* v. *Munsingwear, Inc.*, 162 F. 2d 125, 127 (CA8 1947). We express no view on *Munsingwear*'s implicit conclusion that repeal of administrative regulations cannot fairly be attributed to the Executive Branch when it litigates in the name of the United States.

legislators, acting in their capacities as presiding officers of the legislature, appealed from a federal judgment that invalidated a state statute on constitutional grounds. After the jurisdictional statement was filed the legislators lost their posts, and their successors in office withdrew the appeal. Holding that we lacked jurisdiction for want of a proper appellant, we dismissed. The legislators then argued that the judgments should be vacated under *Munsingwear*. But we denied the request, noting that "[t]his controversy did not become moot due to circumstances unattributable to any of the parties. The controversy ended when the losing party—the [State] Legislature—declined to pursue its appeal. Accordingly, the *Munsingwear* procedure is inapplicable to this case." *Karcher*, 484 U. S., at 83. So, too, here.

It is true, of course, that respondent agreed to the settlement that caused the mootness. Petitioner argues that vacatur is therefore fair to respondent, and seeks to distinguish our prior cases on that ground. But that misconceives the emphasis on fault in our decisions. That the parties are jointly responsible for settling may in some sense put them on even footing, but petitioner's case needs more than that. Respondent won below. It is petitioner's burden, as the party seeking relief from the status quo of the appellate judgment, to demonstrate not merely equivalent responsibility for the mootness, but equitable entitlement to the extraordinary remedy of vacatur. Petitioner's voluntary forfeiture of review constitutes a failure of equity that makes the burden decisive, whatever respondent's share in the mooting of the case might have been.

As always when federal courts contemplate equitable relief, our holding must also take account of the public interest. "Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S.*

Philips Corp., 510 U. S. 27, 40 (1993) (STEVENS, J., dissenting). Congress has prescribed a primary route, by appeal as of right and certiorari, through which parties may seek relief from the legal consequences of judicial judgments. To allow a party who steps off the statutory path to employ the secondary remedy of vacatur as a refined form of collateral attack on the judgment would—quite apart from any considerations of fairness to the parties—disturb the orderly operation of the federal judicial system. *Munsingwear* establishes that the public interest is best served by granting relief when the demands of "orderly procedure," 340 U. S., at 41, cannot be honored; we think conversely that the public interest requires those demands to be honored when they can.

Petitioner advances two arguments meant to justify vacatur on systemic grounds. The first is that appellate judgments in cases that we have consented to review by writ of certiorari are reversed more often than they are affirmed, are therefore suspect, and should be vacated as a sort of prophylactic against legal error. It seems to us inappropriate, however, to vacate mooted cases, in which we have no constitutional power to decide the merits, on the basis of assumptions about the merits. Second, petitioner suggests that "[v]acating a moot decision, and thereby leaving an issue . . . temporarily unresolved in a Circuit, can facilitate the ultimate resolution of the issue by encouraging its continued examination and debate." Brief for Petitioner 33. We have found, however, that debate *among* the courts of appeals sufficiently illuminates the questions that come before us for review. The value of additional intracircuit debate seems to us far outweighed by the benefits that flow to litigants and the public from the resolution of legal questions.

A final policy justification urged by petitioner is the facilitation of settlement, with the resulting economies for the federal courts. But while the availability of vacatur may facilitate settlement after the judgment under review has

been rendered and certiorari granted (or appeal filed), it may *deter* settlement at an earlier stage. *Some* litigants, at least, may think it worthwhile to roll the dice rather than settle in the district court, or in the court of appeals, if, but only if, an unfavorable outcome can be washed away by a settlement-related vacatur. And the judicial economies achieved by settlement at the district-court level are ordinarily much more extensive than those achieved by settlement on appeal. We find it quite impossible to assess the effect of our holding, either way, upon the frequency or systemic value of settlement.

Although the case before us involves only a motion to vacate, by reason of settlement, the judgment of a court of appeals (with, of course, the consequential vacation of the underlying judgment of the district court), it is appropriate to discuss the relevance of our holding to motions at the court-of-appeals level for vacatur of district-court judgments. Some opinions have suggested that vacatur motions at that level should be more freely granted, since district-court judgments are subject to review as of right. See, *e. g.*, *Manufacturers Hanover Trust Co.* v. *Yanakas*, 11 F. 3d 381, 384 (CA2 1993). Obviously, this factor does not affect the primary basis for our denying vacatur. Whether the appellate court's seizure of the case is the consequence of an appellant's right or of a petitioner's good luck has no bearing upon the lack of equity of a litigant who has voluntarily abandoned review. If the point of the proposed distinction is that district-court judgments, being subject to review as of right, are more likely to be overturned and hence presumptively less valid: We again assert the inappropriateness of disposing of cases, whose merits are beyond judicial power to consider, on the basis of judicial estimates regarding their merits. Moreover, as petitioner's own argument described two paragraphs above points out, the reversal rate for cases in which this Court grants certiorari (a precondition for our vacatur) is over 50%—more than double the reversal rate for appeals

to the courts of appeals. See Fisch, Rewriting History: The Propriety of Eradicating Prior Decisional Law Through Settlement and Vacatur, 76 Cornell L. Rev. 589, 595, n. 25 (1991) (citing studies).

We hold that mootness by reason of settlement does not justify vacatur of a judgment under review. This is not to say that vacatur can never be granted when mootness is produced in that fashion. As we have described, the determination is an equitable one, and exceptional circumstances may conceivably counsel in favor of such a course. It should be clear from our discussion, however, that those exceptional circumstances do not include the mere fact that the settlement agreement provides for vacatur—which neither diminishes the voluntariness of the abandonment of review nor alters any of the policy considerations we have discussed. Of course even in the absence of, or before considering the existence of, extraordinary circumstances, a court of appeals presented with a request for vacatur of a district-court judgment may remand the case with instructions that the district court consider the request, which it may do pursuant to Federal Rule of Civil Procedure 60(b).

* * *

Petitioner's motion to vacate the judgment of the Court of Appeals for the Ninth Circuit is denied. The case is dismissed as moot. See this Court's Rule 46.

It is so ordered.

Syllabus

HESS ET AL. *v.* PORT AUTHORITY TRANS-HUDSON CORPORATION

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

No. 93–1197. Argued October 3, 1994—Decided November 14, 1994

Petitioners, two railroad workers, were injured in unrelated incidents while employed by respondent bistate railway, the Port Authority Trans-Hudson Corporation (PATH). PATH is a wholly owned subsidiary of the Port Authority of New York and New Jersey (Port Authority or Authority), an entity created when Congress, pursuant to the Constitution's Interstate Compact Clause, consented to a compact between the Authority's parent States. Petitioners filed separate personal injury actions under the Federal Employers' Liability Act (FELA). The District Court dismissed the suits under Third Circuit precedent, *Port Authority Police Benevolent Assn., Inc.* v. *Port Authority of New York and New Jersey*, 819 F. 2d 413 (CA3) *(Port Authority PBA)*, which declared PATH a state agency entitled to Eleventh Amendment immunity from suit in federal court. The Third Circuit consolidated the cases and summarily affirmed. That court's assessment of PATH's immunity conflicts with the Second Circuit's decision in *Feeney* v. *Port Authority Trans-Hudson Corporation*, 873 F. 2d 628.

Held: PATH is not entitled to Eleventh Amendment immunity from suit in federal court. Pp. 39–53.

(a) The Court presumes that an entity created pursuant to the Compact Clause does not qualify for Eleventh Amendment immunity unless there is good reason to believe that the States structured the entity to arm it with the States' own immunity, and that Congress concurred in that purpose. *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U. S. 391, 401. The Port Authority emphasizes that certain indicators of immunity are present in this case, particularly provisions in the interstate compact and its implementing legislation establishing state control over Authority commissioners, acts, powers, and responsibilities, and state-court decisions typing the Authority as an agency of its parent States. Other indicators, however, point away from immunity, particularly the States' lack of financial responsibility for the Authority. Pp. 39–46.

(b) When indicators of immunity point in different directions, the Court is guided primarily by the Eleventh Amendment's twin reasons

for being: the States' dignity and their financial solvency. Neither is implicated here. First, there is no genuine threat to the dignity of New York or New Jersey in allowing petitioners to pursue FELA claims against PATH in federal court. The Port Authority is a discrete entity created by compact among three sovereigns, the two States and the Federal Government. Federal courts are not alien to such an entity, for they are ordained by one of its founders. Nor is it disrespectful to one State to call upon the entity to answer complaints in federal court, for the States agreed to the power sharing, coordination, and unified action that typify Compact Clause creations. Second, most Federal Courts of Appeals have identified the "state treasury" criterion—whether a judgment against the entity must be satisfied out of a State's treasury—as the most important consideration in determining whether a state-created entity qualifies for Eleventh Amendment immunity. The Port Authority, however, is financially self-sufficient: it generates its own revenues and pays its own debts. Where, as here, the States are neither legally nor practically obligated to pay the entity's debts, the Eleventh Amendment's core concern is not implicated. Pp. 47–51.

(c) The conflict between the Second and Third Circuits no longer concerns the correct legal theory, for the Third Circuit, as shown in two post-*Port Authority PBA* decisions, now accepts the prevailing "state treasury" view. A narrow intercircuit split persists only because the Circuits differ on whether the Port Authority's debts are those of its parent States. In resolving that issue, the *Port Authority PBA* court relied primarily on a compact provision calling for modest state contributions, capped at $100,000 annually from each State, unless Port Authority revenues were "adequate to meet all expenditures," but the court drew from that provision far more than its text warrants. Pp. 51–52.

8 F. 3d 811, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, SOUTER, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, *post,* p. 53. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined, *post,* p. 55.

Lawrence A. Katz argued the cause for petitioners. With him on the briefs were *Joseph A. Coffey, Jr.*, and *David J. Bederman.*

Hugh H. Welsh argued the cause for respondent. With him on the brief were *Arthur P. Berg, Donald F. Burke,* and *Anne M. Tannenbaum.**

JUSTICE GINSBURG delivered the opinion of the Court.

These paired cases arise out of work-related accidents in which a locomotive engineer and a train conductor, employees of a bistate railway authorized by interstate compact, sustained personal injuries. The courts below—the United States District Court for the District of New Jersey, and the United States Court of Appeals for the Third Circuit—rejected both complaints on the ground that the Eleventh Amendment sheltered respondent railway from suit in federal court. We granted certiorari to resolve an intercircuit conflict on this issue. 510 U. S. 1190 (1994). Concluding that respondent bistate railway, the Port Authority Trans-Hudson Corporation (PATH), is not cloaked with the Elev-

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**William G. Mahoney* and *L. Pat Wynns* filed a brief for the Railway Labor Executives' Association as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of New Jersey et al. by *Deborah T. Poritz,* Attorney General of New Jersey, *Andrea M. Silkowitz, Robert H. Stoloff,* and *Mary Jacobson,* Assistant Attorneys General, and *Eldad Philip Isaac,* Deputy Attorney General, joined by the Attorneys General for their respective jurisdictions as follows: *G. Oliver Koppell* of New York, *James H. Evans* of Alabama, *Winston Bryant* of Arkansas, *Gale A. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *Michael J. Bowers* of Georgia, *Robert A. Marks* of Hawaii, *Larry EchoHawk* of Idaho, *Roland W. Burris* of Illinois, *Pamela Carter* of Indiana, *Robert T. Stephen* of Kansas, *Chris Gorman* of Kentucky, *Richard P. Ieyoub, Jr.,* of Louisiana, *J. Joseph Curran, Jr.,* of Maryland, *Scott Harshbarger* of Massachusetts, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Tom Udall* of New Mexico, *Michael F. Easley* of North Carolina, *Lee Fisher* of Ohio, *Susan B. Loving* of Oklahoma, *Theodore R. Kulongoski* of Oregon, *Ernest D. Preate, Jr.,* of Pennsylvania, *T. Travis Medlock* of South Carolina, *Mark Barnett* of South Dakota, *Jeffrey L. Amestoy* of Vermont, *James S. Gilmore III* of Virginia, and *James E. Doyle* of Wisconsin; and for the Council of State Governments et al. by *Richard Ruda* and *Clifton S. Elgarten.*

enth Amendment immunity that a State enjoys, we reverse the judgment of the Third Circuit.

I

A

Petitioners Albert Hess and Charles F. Walsh, both railroad workers, were injured in unrelated incidents in the course of their employment by PATH. PATH, a wholly owned subsidiary of the Port Authority of New York and New Jersey (Port Authority or Authority), operates a commuter railroad connecting New York City to northern New Jersey. In separate personal injury actions commenced in the United States District Court for the District of New Jersey, petitioners sought to recover damages for PATH's alleged negligence; both claimed a right to compensation under the federal law governing injuries to railroad workers, the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. § 51 *et seq.*[1] Hess and Walsh filed their complaints within the 3-year time limit set by the FELA, see 35 Stat. 66, as amended, 45 U. S. C. § 56, but neither petitioner met the 1-year limit specified in the States' statutory consent to sue the Port Authority. See N. J. Stat. Ann. §§ 32:1–157, 32:1–163 (West 1990); N. Y. Unconsol. Laws §§ 7101, 7107 (McKinney 1979).

PATH moved to dismiss each action, asserting (1) PATH's qualification as a state agency entitled to the Eleventh Amendment immunity from suit in federal court enjoyed by New York and New Jersey,[2] and (2) petitioners' failure to

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[1] Hess additionally invoked the Boiler Inspection Act, ch. 103, 36 Stat. 913, as amended, 45 U. S. C. § 22 *et seq.*, as a basis for his claim for damages.

[2] The Eleventh Amendment provides:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

commence court proceedings within the 1-year limit prescribed by New York and New Jersey. Third Circuit precedent concerning the Port Authority supported PATH's plea. In *Port Authority Police Benevolent Assn., Inc.* v. *Port Authority of New York and New Jersey*, 819 F. 2d 413 *(Port Authority PBA)*, cert. denied, 484 U. S. 953 (1987), the Court of Appeals for the Third Circuit held that the Port Authority is "an agency of the state and is thus entitled to Eleventh Amendment immunity." 819 F. 2d, at 418. In reaching this decision, the Court of Appeals acknowledged that "[g]iven the solvency and size of the [Port Authority's] General Reserve Fund, it is unlikely that the Authority would have to go to the state to get payment for any liabilities issued against it." *Id.*, at 416.[3] But the Third Circuit considered "crystal clear" the intentions of New York and New Jersey: "[I]f the Authority is ever in need of financial support, the states will be there to provide it." *Ibid.*

In line with *Port Authority PBA*, the District Court held in the *Hess* and *Walsh* actions that PATH enjoys Eleventh Amendment immunity, and could be sued in federal court only within the 1-year time frame New York and New Jersey allowed. See *Walsh*, 813 F. Supp. 1095, 1096–1097 (NJ 1993); *Hess*, 809 F. Supp. 1172, 1178–1182 (NJ 1992). Accordingly, both actions were dismissed.

The District Court in *Hess* noted an anomaly: Had Hess sued in a New Jersey or New York *state* court the FELA's 3-year limitation period, not the States' 1-year prescription, would have applied. See *id.*, at 1183–1185, and n. 16. This followed from our reaffirmation in *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197 (1991), that the *entire* federal scheme of railroad regulation—including all FELA terms—applies to all railroads, even those wholly

[3] The court referred to the Port Authority of New York and New Jersey Comprehensive Annual Financial Report 42–44 (1985), which shows that the Authority's General Reserve Fund had a balance of over $271 million at the end of 1985.

owned by one State. Time-bar rejection by a federal court of a federal statutory claim that federal prescription would have rendered timely, had the case been brought in state court, becomes comprehensible, the District Court explained, once it is recognized that "'the Eleventh Amendment does not apply in state courts.'" *Hess*, 809 F. Supp., at 1183–1184 (quoting *Hilton*, 502 U. S., at 205); see 809 F. Supp., at 1185, n. 16.

Consolidating *Hess* and *Walsh* on appeal, the Third Circuit summarily affirmed the District Court's judgments. 8 F. 3d 811 (1993) (table).

B

The Port Authority, whose Eleventh Amendment immunity is at issue in these cases, was created in 1921, when Congress, pursuant to the Constitution's Interstate Compact Clause,[4] consented to a compact between the Authority's parent States. 42 Stat. 174. Through the bistate compact, New York and New Jersey sought to achieve "a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York." N. J. Stat. Ann. § 32:1–1 (West 1990); N. Y. Unconsol. Law § 6401 (McKinney 1979). The compact grants the Port Authority power to

> "purchase, construct, lease and/or operate any terminal or transportation facility within [the Port of New York D]istrict; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it." N. J. Stat. Ann. § 32:1–7

[4] Article I, § 10, cl. 3, of the Constitution provides:

"No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

(West 1990); accord, N. Y. Unconsol. Law § 6407 (McKinney 1979).

The Port Authority's domain, the Port of New York District, is a defined geographic area that embraces New York Harbor, including parts of New York and New Jersey. See N. J. Stat. Ann. § 32:1–3 (West 1990); N. Y. Unconsol. Law § 6403 (McKinney 1979).[5]

"The Port Authority was conceived as a financially independent entity, with funds primarily derived from private investors." *United States Trust Co. of N. Y.* v. *New Jersey*, 431 U. S. 1, 4 (1977). Tolls, fees, and investment income account for the Authority's secure financial position. See App. to Pet. for Cert. 60a–61a.[6]

Twelve commissioners, six selected by each State, govern the Port Authority. See N. J. Stat. Ann. §§ 32:1–5, 32:12–3 (West 1990); N. Y. Unconsol. Law § 6405 (McKinney 1979); 1930 N. Y. Laws, ch. 422, § 6. Each State may remove, for cause, the commissioners it appoints. See N. J. Stat. Ann. §§ 32:1–5, 32:12–5 (West 1990); N. Y. Unconsol. Law § 6405 (McKinney 1979); 1930 N. Y. Laws, ch. 422, § 4. Consonant with the Authority's geographic domain, four of New York's six commissioners must be resident voters of New York City, and four of New Jersey's must be resident voters of the New Jersey portion of the Port of New York District. See N. J. Stat. Ann. § 32:1–5 (West 1990); N. Y. Unconsol. Law § 6405 (McKinney 1979). The Port Authority's commissioners also serve as PATH's directors. See N. J. Stat. Ann. § 32:1–35.61 (West 1990); N. Y. Unconsol. Law § 6612 (McKinney 1979).

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[5] See also N. J. Stat. Ann. § 32:2–23.28(j) (West 1990) (defining larger area in which Port Authority has obligation to supply commuter buses to authorized operators); N. Y. Unconsol. Law § 7202(10) (McKinney Supp. 1994) (same).

[6] At the end of 1993, the Port Authority had over $2.8 billion in net assets and $534 million in its General Reserve Fund. See Port Authority of New York and New Jersey, Comprehensive Annual Financial Report 49, 64 (1993) (hereinafter 1993 Annual Financial Report).

The Governor of each State may veto actions of the Port Authority commissioners from that State, including actions taken as PATH directors. See N. J. Stat. Ann. §§ 32:1–17, 32:1–35.61, 32:2–6 to 32:2–9 (West 1990); N. Y. Unconsol. Law §§ 6417, 6612, 7151–7154 (McKinney 1979). Acting jointly, the state legislatures may augment the powers and responsibilities of the Port Authority, see N. J. Stat. Ann. § 32:1–8 (West 1990); N. Y. Unconsol. Law § 6408 (McKinney 1979), and specify the purposes for which the Port Authority's surplus revenues are used. See N. J. Stat. Ann. § 32:1–35.142 (West 1990); N. Y. Unconsol. Law § 7002 (McKinney 1979).

Debts and other obligations of the Port Authority are not liabilities of the two founding States, and the States do not appropriate funds to the Authority. The compact and its implementing legislation bar the Port Authority from drawing on state tax revenue, pledging the credit of either State, or otherwise imposing any charge on either State. See N. J. Stat. Ann. §§ 32:1–8, 32:1–33 (West 1990); N. Y. Unconsol. Law §§ 6408, 6459 (McKinney 1979).

The States did agree to appropriate sums to cover the Authority's "salaries, office and other administrative expenses," N. J. Stat. Ann. § 32:1–16 (West 1990); N. Y. Unconsol. Law § 6416 (McKinney 1979), but this undertaking is notably modest.[7] By its terms, it applies only "until the revenues from operations conducted by the [P]ort [A]uthority are adequate to meet all expenditures." The promise of support has a low ceiling: $100,000 annually from each State. Thus, the States in no way undertake to cover the bulk of the Author-

[7] Compact article XV, the provision for expense coverage, reads in full:

"Unless and until the revenues from operations conducted by the [P]ort [A]uthority are adequate to meet all expenditures, the legislatures of the two states shall appropriate, in equal amounts, annually, for the salaries, office and other administrative expenses, such sum or sums as shall be recommended by the [P]ort [A]uthority and approved by the governors of the two states, but each state obligates itself hereunder only to the extent of one hundred thousand dollars in any one year." N. J. Stat. Ann. § 32:1–16 (West 1990); N. Y. Unconsol. Law § 6416 (McKinney 1979).

ity's operating and capital expenses. Further, even the limited administrative expense payments for which the States provided are contingent on the advance approval of both Governors, see *ibid.*, and the States' treasuries may not be tapped until both legislatures have appropriated the necessary funds. See N. J. Stat. Ann. §32:1–18 (West 1990); N. Y. Unconsol. Law §6418 (McKinney 1979). A judgment against PATH, it is thus apparent, would not be enforceable against either New York or New Jersey.

C

The Third Circuit's assessment of PATH's qualification for Eleventh Amendment immunity conflicts with the judgment of the Court of Appeals for the Second Circuit on the same matter. See *Feeney* v. *Port Authority Trans-Hudson Corporation*, 873 F. 2d 628, 631 (1989), aff'd on other grounds, 495 U. S. 299 (1990). The Second Circuit concluded:

> "No provision [of the compact or of state legislation pursuant to the compact] commits the treasuries of the two states to satisfy judgments against the Port Authority . . . . We believe that this insulation of state treasuries from the liabilities of the Port Authority outweighs both the methods of appointment and gubernatorial veto so far as the Eleventh Amendment immunity is concerned." 873 F. 2d, at 631.

We affirmed the Second Circuit's judgment in *Feeney*, but we bypassed the question whether PATH enjoyed the States' Eleventh Amendment immunity. See *Port Authority Trans-Hudson Corp.* v. *Feeney*, 495 U. S. 299 (1990). Assuming, *arguendo*, that the suit in *Feeney* was tantamount to a claim against the States,[8] we ruled that New York and New

[8] Our assumption was in accord with prior state and federal decisions typing the Port Authority a state arm or agency. See, *e. g.*, *Howell* v. *Port of New York Authority*, 34 F. Supp. 797, 801 (NJ 1940); *Trippe* v. *Port of New York Authority*, 14 N. Y. 2d 119, 123, 198 N. E. 2d 585, 586

Jersey had effectively consented to the litigation. See *id.*, at 306–309 (relying on N. J. Stat. Ann. §§ 32:1–157, 32:1–162 (West 1963); N. Y. Unconsol. Laws §§ 7101, 7106 (McKinney 1979)). Consent is not arguable here, because Hess and Walsh commenced suit too late to meet the 1-year prescription specified by the States. See *supra*, at 33. Accordingly, we confront directly the sole question petitioners Hess and Walsh present, and we hold that PATH is not entitled to Eleventh Amendment immunity from suit in federal court.

II

The Eleventh Amendment largely shields States from suit in federal court without their consent, leaving parties with claims against a State to present them, if the State permits, in the State's own tribunals. Adoption of the Amendment responded most immediately to the States' fears that "federal courts would force them to pay their Revolutionary War debts, leading to their financial ruin." *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 151 (1984) (STEVENS, J., dissenting); see also *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U. S. 275, 276, n. 1 (1959); *Missouri* v. *Fiske*, 290 U. S. 18, 27 (1933).[9] More pervasively, current Eleventh Amendment jurisprudence emphasizes the integrity retained by each State in our federal system:

> "The Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity. See *Hans*

(1964); *Miller* v. *Port of New York Authority*, 18 N. J. Misc. 601, 606, 15 A. 2d 262, 266 (Sup. Ct. 1939).

[9] As Chief Justice John Marshall recounted: "[A]t the adoption of the [C]onstitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal Courts" prompted swift passage of the Eleventh Amendment. *Cohens* v. *Virginia*, 6 Wheat. 264, 406 (1821). See generally 1 C. Warren, The Supreme Court in United States History 96–102 (1922).

> v. *Louisiana*, 134 U. S. 1, 13 (1890). It thus accords the States the respect owed them as members of the federation." *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 146 (1993).

Bistate entities occupy a significantly different position in our federal system than do the States themselves. The States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are creations of three discrete sovereigns: two States and the Federal Government.[10] Their mission is to address "'interests and problems that do not coincide nicely either with the national boundaries or with State lines'"—interests that "'may be badly served or not served at all by the ordinary channels of National or State political action.'" V. Thursby, Interstate Cooperation: A Study of the Interstate Compact 5 (1953) (quoting National Resources Committee, Regional Factors in National Planning and Development 34 (1935)); see Grad, Federal-State Compact: A New Experiment in Cooperative Federalism, 63 Colum. L. Rev. 825, 854–855 (1963) (Compact Clause entities formed to deal with "broad, region-wide problems" should not be regarded as "an affirmation of a narrow concept of state sovereignty," but as "independently functioning parts of a regional polity and of a national union.").

A compact accorded congressional consent "is more than a supple device for dealing with interests confined within a region. . . . [I]t is also a means of safeguarding the national interest . . . ." *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22, 27 (1951). The Port Authority of New York and New Jersey exemplifies both the need for, and the utility of, Compact Clause entities:

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[10] If the creation of a bistate entity does not implicate federal concerns, however, federal consent is not required. See *Virginia* v. *Tennessee*, 148 U. S. 503, 517–520 (1893).

> "From the point of view of geography, commerce, and engineering, the Port of New York is an organic whole. Politically, the port is split between the law-making of two States, independent but futile in their respective spheres. The scarcity of land and mounting commerce have concentrated on the New York side of the Hudson River the bulk of the terminal facilities for foreign commerce, while it has made the Jersey side, to a substantial extent, the terminal and breaking-up yards for the east- and west-bound traffic. In addition, both sides of the Hudson are dotted with municipalities, who have sought to satisfy their interest in the general problem through a confusion of local regulations. In addition, the United States has been asserting its guardianship over interstate and foreign commerce. What in fact was one, in law was many. Plainly the situation could not be adequately dealt with except through the coordinated efforts of New York, New Jersey, and the United States. The facts presented a problem for the unified action of the law-making of these three governments, and law heeded facts." Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments, 34 Yale L. J. 685, 697 (1925) (footnote omitted).

Suit in federal court is not an affront to the dignity of a Compact Clause entity, for the federal court, in relation to such an enterprise, is hardly the instrument of a distant, disconnected sovereign; rather, the federal court is ordained by one of the entity's founders. Nor is the integrity of the compacting States compromised when the Compact Clause entity is sued in federal court. As part of the federal plan prescribed by the Constitution, the States agreed to the power sharing, coordination, and unified action that typify

Compact Clause creations.[11] Again, the federal tribunal cannot be regarded as alien in this cooperative, trigovernmental arrangement. This is all the more apparent here, where the very claims in suit—the FELA claims of Hess and Walsh—arise under federal law. See *supra*, at 33.

Because Compact Clause entities owe their existence to state and federal sovereigns acting cooperatively, and not to any "one of the United States," see *supra*, at 33, n. 2, their political accountability is diffuse; they lack the tight tie to the people of one State that an instrument of a single State has:

> "An interstate compact, by its very nature, shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact. Such an agency under the control of special interests or gubernatorially appointed representatives is two or more steps removed from popular control, or even of control by a local government." M. Ridgeway, Interstate Compacts: A Question of Federalism 300 (1971).

In sum, within any single State in our representative democracy, voters may exercise their political will to direct state policy; bistate entities created by compact, however, are not subject to the unilateral control of any one of the States that compose the federal system.

Accordingly, there is good reason not to amalgamate Compact Clause entities with agencies of "one of the United States" for Eleventh Amendment purposes. This Court so recognized in *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U. S. 391 (1979), the only case, prior

[11] See *Port Authority Trans-Hudson Corp.* v. *Feeney*, 495 U. S. 299, 314–316 (1990) (Brennan, J., concurring in part and concurring in judgment) (observing that no single State has dominion over an entity created by interstate compact and that state/federal shared power is the essential attribute of such an entity); M. Ridgeway, Interstate Compacts: A Question of Federalism 297–300 (1971) (emphasizing limits of individual State's authority over interstate compact entities).

to this one, in which we decided whether a bistate entity qualified for Eleventh Amendment immunity.[12]

Lake Country rejected a plea that the Tahoe Regional Planning Agency (TRPA), an agency created by compact to which California and Nevada were parties, acquired the immunity which the Eleventh Amendment accords to each one of TRPA's parent States. TRPA had argued that if the Amendment shields each State, then surely it must shield an entity "so important that it could not be created by [two] States without a special Act of Congress." *Id.*, at 400. That "expansive reading," we said, was not warranted, for the Amendment specifies "the State" as the entity protected:

> "By its terms, the protection afforded by [the Eleventh] Amendment is only available to 'one of the United States.' It is true, of course, that some agencies exercising state power have been permitted to invoke the Amendment in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself. But the Court has consistently refused to construe the Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a 'slice of state power.'" *Id.*, at 400–401 (footnotes omitted).

We then set out a general approach: We would presume the Compact Clause agency does not qualify for Eleventh Amendment immunity "[u]nless there is good reason to believe that the States structured the new agency to enable it to enjoy the special constitutional protection of the States

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[12] *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U. S. 275, 279, 281–282 (1959), and *Feeney*, 495 U. S., at 308–309, also involved Eleventh Amendment pleas by bistate agencies; we upheld the exercise of federal-court jurisdiction in both cases on the ground that the asserted immunity from suit had been waived.

themselves, and that Congress concurred in that purpose." *Id.*, at 401.

The Court in *Lake Country* found "no justification for reading additional meaning into the limited language of the Amendment." Indeed, all relevant considerations in that case weighed against TRPA's plea. The compact called TRPA a "political subdivision," and required that the majority of the governing members be county and city appointees. *Ibid.* Obligations of TRPA, the compact directed, "shall *not* be binding on either State." TRPA's prime function, we noted, was regulation of land use, a function traditionally performed by local governments. Further, the agency's performance of that function gave rise to the litigation. Moreover, rules made by TRPA were "not subject to veto at the state level." *Id.*, at 402.

This case is more complex. Indicators of immunity or the absence thereof do not, as they did in *Lake Country*, all point the same way. While 8 of the Port Authority's 12 commissioners must be resident voters of either New York City or other parts of the Port of New York District,[13] this indicator of local governance is surely offset by the States' controls. All commissioners are state appointees. Acting alone, each State through its Governor may block Port Authority measures; and acting together, both States, through their legislatures, may enlarge the Port Authority's powers and add to its responsibilities.

The compact and its implementing legislation do not type the Authority as a state agency; instead they use various terms: "joint or common agency";[14] "body corporate and poli-

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[13] Cf. *Farias* v. *Bexar Cty. Bd. of Trustees for Mental Health Mental Retardation Servs.*, 925 F. 2d 866, 875 (CA5) (entity held autonomous, and thus not shielded by Eleventh Amendment, where board members had to be "qualified voters of the region"), cert. denied, 502 U. S. 866 (1991).

[14] N. J. Stat. Ann. § 32:1–1 (West 1990); N. Y. Unconsol. Law § 6401 (McKinney 1979).

tic";[15] "municipal corporate instrumentality of the two states for the purpose of developing the port and effectuating the pledge of the states in the . . . compact."[16] State courts, however, repeatedly have typed the Port Authority an agency of the States rather than a municipal unit or local district. See, *e. g.*, *Whalen* v. *Wagner*, 4 N. Y. 2d 575, 581–583, 152 N. E. 2d 54, 56–57 (1958) (legislation authorizing specific Port Authority projects does not pertain to the "property, affairs or government" of a city because "the matters over which the Port Authority has jurisdiction are of State concern").

Port Authority functions are not readily classified as typically state or unquestionably local. States and municipalities alike own and operate bridges, tunnels, ferries, marine terminals, airports, bus terminals, industrial parks, also commuter railroads.[17] This consideration, therefore, does not advance our Eleventh Amendment inquiry.

Pointing away from Eleventh Amendment immunity, the States lack financial responsibility for the Port Authority. Conceived as a fiscally independent entity financed predominantly by private funds, see *United States Trust Co. of N. Y.* v. *New Jersey*, 431 U. S., at 4, the Authority generates its own revenues, and for decades has received no money from the States. See *Commissioner* v. *Shamberg's Estate*, 144 F. 2d 998, 1002 (CA2 1944) ("In the compact . . . the states agreed to make annual appropriations (not in excess of $100,000 for each state) for expenses of the Authority until

[15] N. J. Stat. Ann. § 32:1–4 (West 1990); N. Y. Unconsol. Law § 6404 (McKinney 1979); accord, N. J. Stat. Ann. § 32:1–7 (West 1990); N. Y. Unconsol. Law § 6407 (McKinney 1979).

[16] N. J. Stat. Ann. § 32:1–33 (West 1990); N. Y. Unconsol. Law § 6459 (McKinney 1979).

[17] Other Authority facilities, such as the World Trade Center, an office complex housing numerous private tenants, see 1993 Annual Financial Report 33–35, and the Teleport, a satellite communications center, see *id.*, at 30, are not typically operated by either States or municipalities.

[r]evenues from its operations were sufficient to meet its expenses. These annual appropriations were discontinued in 1934 because the revenues from the bridges, the Holland Tunnel and Inland Terminal had become sufficient."), cert. denied, 323 U. S. 792 (1945).

The States, as earlier observed, bear no legal liability for Port Authority debts; they are not responsible for the payment of judgments against the Port Authority or PATH. The Third Circuit, in *Port Authority PBA*, assumed that, "if the Authority is ever in need," the States would pay. 819 F. 2d, at 416. But nothing in the compact or the laws of either State supports that assumption. See *supra*, at 37–38. As the Second Circuit concisely stated:

> "The Port Authority is explicitly barred from pledging the credit of either state or from borrowing money in any name but its own. Even the provision for the appropriation of moneys for administrative expenses up to $100,000 per year requires prior approval by the governor of each state and an actual appropriation before obligations for such expenses may be incurred. Moreover, the phrase 'salaries, office and other administrative expenses' clearly limits this essentially optional obligation of the two states to a very narrow category of expenses and thus also evidences an intent to insulate the states' treasuries from the vast bulk of the Port Authority's operating and capital expenses, including personal injury judgments." *Feeney*, 873 F. 2d, at 631.[18]

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[18] Concerning the Third Circuit's decision in *Port Authority PBA*, the Second Circuit said:

"That decision . . . was based on the Third Circuit's understanding that, in the event that 'a judgment were entered against the Authority that was serious enough to deplete its resources, the Authority would be able to go to the state legislatures in order to recoup the amount needed for its operating expenses.' To the extent that this statement implies that the states *must* make such an appropriation, it appears to be in error." *Feeney*, 873 F. 2d, at 632 (quoting *Port Authority PBA*, 819 F. 2d, at 416).

III

When indicators of immunity point in different directions, the Eleventh Amendment's twin reasons for being remain our prime guide. See *supra*, at 39–40. We have already pointed out that federal courts are not alien to a bistate entity Congress participated in creating. Nor is it disrespectful to one State to call upon the Compact Clause entity to answer complaints in federal court. See *supra*, at 41–43. Seeing no genuine threat to the dignity of New York or New Jersey in allowing Hess and Walsh to pursue FELA claims against PATH in federal court, we ask, as *Lake Country* instructed, whether there is here "good reason to believe" the States and Congress designed the Port Authority to enjoy Eleventh Amendment immunity. 440 U. S., at 401.

PATH urges that we find good reason to classify the Port Authority as a state agency for Eleventh Amendment purposes based on the control New York and New Jersey wield over the Authority. The States appoint and can remove the commissioners, the Governors can veto Port Authority actions, and the States' legislatures can determine the projects the Port Authority undertakes. See *supra*, at 36–37. But ultimate control of every state-created entity resides with the State, for the State may destroy or reshape any unit it creates. "[P]olitical subdivisions exist solely at the whim and behest of their State," *Feeney*, 495 U. S., at 313 (Brennan, J., concurring in part and concurring in judgment), yet cities and counties do not enjoy Eleventh Amendment immunity. See, *e. g.*, *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 280 (1977); *Lincoln County* v. *Luning*, 133 U. S. 529, 530 (1890). Moreover, no one State alone can control the course of a Compact Clause entity. See *supra*, at 42, and n. 11. Gauging actual control, particularly when an entity has multiple creator-controllers, can be a "perilous inquiry," "an uncertain and unreliable exercise." See Note, 92 Colum. L. Rev. 1243, 1284 (1992); see also *id.*, at 1302, and n. 264 (describing "degree to which the state controls the

entity" as a criterion neither "[i]ntelligible" nor "judicially manageable").

Moreover, rendering control dispositive does not home in on the impetus for the Eleventh Amendment: the prevention of federal-court judgments that must be paid out of a State's treasury. See Fletcher, A Historical Interpretation of the Eleventh Amendment, 35 Stan. L. Rev. 1033, 1129 (1983) (identifying "the award of money judgments against the states" as "the traditional core of eleventh amendment protection").[19] Accordingly, Courts of Appeals have recognized the vulnerability of the State's purse as the most salient factor in Eleventh Amendment determinations. See, *e. g.*, *Baxter* v. *Vigo Cty. School Corp.*, 26 F. 3d 728, 732–733 (CA7 1994) (most significant factor is whether entity has power to raise its own funds); *Hutsell* v. *Sayre*, 5 F. 3d 996, 999 (CA6 1993) ("The most important factor . . . is whether any monetary judgment would be paid out of the state treasury."), cert. denied, 510 U. S. 1119 (1994); *Metcalf & Eddy, Inc.* v. *Puerto Rico Aqueduct and Sewer Authority*, 991 F. 2d 935, 942–943 (CA1 1993) ("First, and most fundamentally, [the entity's] inability to tap the Commonwealth treasury or pledge the Commonwealth's credit leaves it unable to exercise the power of the purse. On this basis, [the entity] is ill-deserving of Eleventh Amendment protection."); *Bolden* v. *Southeastern Pa. Transp. Authority*, 953 F. 2d 807, 818 (CA3 1991) (in banc) ("[T]he 'most important' factor is 'whether any judgment would be paid from the state treasury.' ") (quoting *Fitchik* v. *New Jersey Transit Rail Operations, Inc.*, 873 F. 2d 655, 659 (CA3) (in banc), cert. denied, 493 U. S. 850 (1989)), cert. denied, 504 U. S. 943 (1992); *Bar-*

[19] The dissent questions whether the driving concern of the Eleventh Amendment is the protection of state treasuries, emphasizing that the Amendment covers "any suit in law *or equity*." *Post*, at 60. The suggestion that suits in equity do not drain money as frightfully as actions at law, however, is belied by the paradigm case. See *Jarndyce and Jarndyce* (Charles Dickens, Bleak House (1853)).

ket, Levy & Fine, Inc. v. *St. Louis Thermal Energy Corp.*, 948 F. 2d 1084, 1087 (CA8 1991) ("Because Missouri and Illinois are not liable for judgments against Bi-State, there is no policy reason for extending the states' sovereign immunity to Bi-State."); *Feeney* v. *Port Authority Trans-Hudson Corporation,* 873 F. 2d, at 631 ("In cases where doubt has existed as to the availability of Eleventh Amendment immunity, the Supreme Court has emphasized the exposure of the state treasury as a critical factor."), aff'd on other grounds, 495 U. S. 299 (1990); *Jacintoport Corp.* v. *Greater Baton Rouge Port Comm'n,* 762 F. 2d 435, 440 (CA5 1985) ("One of the most important goals of the immunity of the Eleventh Amendment is to shield states' treasuries. . . . The purpose of the immunity therefore largely disappears when a judgment against the entity does not entail a judgment against the state."), cert. denied, 474 U. S. 1057 (1986). In sum, as New York and New Jersey concede, the "vast majority of Circuits . . . have concluded that the state treasury factor is the most important factor to be considered . . . and, in practice, have generally accorded this factor dispositive weight." Brief for States of New Jersey, New York et al. as *Amici Curiae* 18–19.

The Port Authority's anticipated and actual financial independence—its long history of paying its own way, see *supra*, at 37–38, and n. 7, 45–46—contrasts with the situation of transit facilities that place heavy fiscal tolls on their founding States. In *Alaska Cargo Transport, Inc.* v. *Alaska R. Corp.,* 5 F. 3d 378 (CA9 1993), for example, Eleventh Amendment immunity was accorded a thinly capitalized railroad that depends for its existence on a state-provided "financial safety net of broad dimension." *Id.,* at 381. And in *Morris* v. *Washington Metropolitan Area Transit Authority,* 781 F. 2d 218 (CADC 1986), Eleventh Amendment immunity was accorded an interstate transit system whose revenue shortfall Congress and the cooperating States anticipated from the start, an enterprise constantly dependent on funds from

the participating governments to meet its sizable operating deficits. See *id.*, at 225–227. As the *Morris* court concluded: "[W]here an agency is so structured that, as a practical matter, if the agency is to survive, a judgment must expend itself against state treasuries, common sense and the rationale of the eleventh amendment require that sovereign immunity attach to the agency." *Id.*, at 227.[20] There is no such requirement where the agency is structured, as the Port Authority is, to be self-sustaining. Cf. *Royal Caribbean Corp.* v. *Puerto Rico Ports Authority*, 973 F. 2d 8, 10–11 (CA1 1992) (Breyer, C. J.) (rejecting Eleventh Amendment immunity plea, despite Commonwealth's control over agency's executives, planning, and administration, where agency did not depend on Commonwealth financing for its income and covered its own expenses, including judgments against it).

PATH maintains that the Port Authority's private funding and financial independence should be assessed differently. Operating profitably, the Port Authority dedicates at least some of its surplus to public projects which the States themselves might otherwise finance. As an example, PATH notes a program under which the Port Authority purchases buses and then leases or transfers them without charge to public and private transportation entities in both States. See N. J. Stat. Ann. §§ 32:2–23.27 to 32:2–23.42 (West 1990); N. Y. Unconsol. Laws §§ 7201–7217 (McKinney Supp. 1994); 1993 Annual Financial Report 66. A judgment against the Port Authority, PATH contends, by reducing the Authority's surplus available to fund such projects, produces an effect equivalent to the impact of a judgment directly against the State. It follows, PATH suggests, that distinguishing the

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[20] The decision in *Morris* is compatible with our approach. See *supra*, at 43–44. Thus, we establish no "*per se* rule that the Eleventh Amendment never applies when States act in concert." *Post*, at 56 (O'Connor, J., dissenting).

fiscal resources of the Port Authority from the fiscal resources of the States is unrealistic and artificial.

This reasoning misses the mark. A charitable organization may undertake rescue or other good work which, in its absence, we would expect the State to shoulder. But none would conclude, for example, that in times of flood or famine the American Red Cross, to the extent it works for the public, acquires the States' Eleventh Amendment immunity.[21] The proper focus is not on the use of profits or surplus, but rather is on losses and debts. If the expenditures of the enterprise exceed receipts, is the State in fact obligated to bear and pay the resulting indebtedness of the enterprise? When the answer is "No"—both legally and practically—then the Eleventh Amendment's core concern is not implicated.

IV

The conflict between the Second and Third Circuits, it bears emphasis, is no longer over the correct legal theory. Both Circuits, in accord with the prevailing view, see *supra*, at 48–49, identify "the 'state treasury' criterion—whether any judgment must be satisfied out of the state treasury—as the most important consideration" in resolving an Eleventh Amendment immunity issue. Brief for States of New Jersey, New York et al. as *Amici Curiae* 2 (acknowledging, but opposing, this widely held view). The intercircuit division thus persists only because the Second and Third Circuits diverge in answering the question: Are the Port Authority's debts those of its parent States? See *ibid.*

Two Third Circuit decisions issued after *Port Authority PBA*, both rejecting Eleventh Amendment pleas by public

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[21] It would indeed heighten a "myster[y] of legal evolution" were we to spread an Eleventh Amendment cover over an agency that consumes no state revenues but contributes to the State's wealth. See Borchard, Government Liability in Tort, 34 Yale L. J. 1, 4 (1924); see also *Muskopf* v. *Corning Hospital Dist.*, 55 Cal. 2d 211, 213–216, and n. 1, 359 P. 2d 457, 458–460, and n. 1 (1961) (Traynor, J.).

transit authorities, indicate the narrow compass of the current Circuit split. In *Bolden* v. *Southeastern Pa. Transp. Authority*, 953 F. 2d 807 (1991) (in banc), cert. denied, 504 U. S. 943 (1992), the Third Circuit held a regional transit authority not entitled to Eleventh Amendment immunity from suit, under 42 U. S. C. § 1983, in federal court. The "most important question," according to Circuit precedent, the Court of Appeals confirmed, was "whether any judgment would be paid from the state treasury." 953 F. 2d, at 816 (internal quotation marks omitted). Earlier, in *Fitchik* v. *New Jersey Transit Rail Operations, Inc.*, 873 F. 2d 655 (in banc), cert. denied, 493 U. S. 850 (1989), an FELA suit, the Third Circuit concluded that the New Jersey Transit Corporation did not share the State's Eleventh Amendment immunity. As in *Bolden*, the court in *Fitchik* called "most important" the question "whether any judgment would be paid from the state treasury." 873 F. 2d, at 659.

Accounting for *Port Authority PBA* in its later *Bolden* decision, the Third Circuit acknowledged that it had relied primarily on the interstate compact provision calling for state contributions unless Port Authority revenues were "'adequate to meet all expenditures.'" See *Bolden*, 953 F. 2d, at 815 (quoting compact article XV, set out *supra*, at 37, n. 7). As earlier indicated, however, see *supra*, at 37–38 and 46, the Third Circuit drew from the compact expense coverage provision far more than the text of that provision warrants.

* * *

A discrete entity created by constitutional compact among three sovereigns, the Port Authority is financially self-sufficient; it generates its own revenues, and it pays its own debts. Requiring the Port Authority to answer in federal court to injured railroad workers who assert a federal statutory right, under the FELA, to recover damages does not touch the concerns—the States' solvency and dignity—that underpin the Eleventh Amendment. The judgment of the

Court of Appeals is accordingly reversed, and the *Hess* and *Walsh* cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring.

JUSTICE GINSBURG's thorough opinion demonstrates why the Court's answer to the open question this case presents is entirely faithful to precedent. I join her opinion without reservation, but believe it appropriate to identify an additional consideration that has motivated my vote.

Most of this Court's Eleventh Amendment jurisprudence is the product of judge-made law unsupported by the text of the Constitution. The Amendment provides as follows:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

As Justice Brennan explained in his dissent in *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 259–302 (1985), this language, when read in light of the historical evidence, is properly understood to mean that the grant of diversity jurisdiction found in Article III, § 2, does not extend to actions brought by individuals against States. See also *Welch* v. *Texas Dept. of Highways and Public Transp.*, 483 U. S. 468, 509–516 (1987) (Brennan, J., dissenting). Yet since *Hans* v. *Louisiana*, 134 U. S. 1 (1890), the Court has interpreted the Eleventh Amendment as injecting broad notions of sovereign immunity into the whole corpus of federal jurisdiction. The Court's decisions have given us "two Eleventh Amendments," one narrow and textual and the other—not truly a constitutional doctrine at all—based on prudential considerations of comity and federalism. See *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 23–29 (1989) (STEVENS, J., concurring).

This Court's expansive Eleventh Amendment jurisprudence is not merely misguided as a matter of constitutional law; it is also an engine of injustice. The doctrine of sovereign immunity has long been the subject of scholarly criticism.[1] And rightly so, for throughout the doctrine's history, it has clashed with the just principle that there should be a remedy for every wrong. See, *e. g.*, *Marbury* v. *Madison*, 1 Cranch 137, 163 (1803). Sovereign immunity inevitably places a lesser value on administering justice to the individual than on giving government a license to act arbitrarily.

Arising as it did from the peculiarities of political life in feudal England, 1 F. Pollock & F. Maitland, History of English Law 515–518 (2d ed. 1909), sovereign immunity is a doctrine better suited to a divinely ordained monarchy than to our democracy.[2] Chief Justice John Jay recognized as much over two centuries ago. See *Chisholm* v. *Georgia*, 2 Dall. 419, 471–472 (1793). Despite the doctrine's genesis in judicial decisions, ironically it has usually been the Legislature that has seen fit to curtail its reach. See Scalia, Sovereign Immunity and Nonstatutory Review of Federal Administrative Action: Some Conclusions from the Public-Lands Cases, 68 Mich. L. Rev. 867, 867–868 (1970).

In my view, when confronted with the question whether a judge-made doctrine of this character should be extended or contained, it is entirely appropriate for a court to give

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[1] See, *e. g.*, Borchard, Government Liability in Tort, 34 Yale L. J. 1 (1924); Davis, Sovereign Immunity Must Go, 22 Admin. L. Rev. 383 (1970). The criticism has not abated in recent years, but rather has focused on this Court's adherence to an unjustifiably broad interpretation of the Eleventh Amendment. See, *e. g.*, Marshall, Fighting the Words of the Eleventh Amendment, 102 Harv. L. Rev. 1342 (1989); Jackson, The Supreme Court, the Eleventh Amendment, and State Sovereign Immunity, 98 Yale L. J. 1 (1988); Amar, Of Sovereignty and Federalism, 96 Yale L. J. 1425 (1987).

[2] Stevens, Is Justice Irrelevant?, 87 Nw. U. L. Rev. 1121, 1124–1125 (1993).

controlling weight to the Founders' purpose to "establish Justice."[3] Today's decision is faithful to that purpose.

Justice O'Connor, with whom The Chief Justice, Justice Scalia, and Justice Thomas join, dissenting.

The Court's opinion, as I read it, makes two different points. First, an interstate compact entity is presumptively not entitled to immunity under the Eleventh Amendment, because the States surrendered any such entitlement "[a]s part of the federal plan prescribed by the Constitution." *Ante*, at 41. When States act in concert under the Interstate Compact Clause, they cede power to each other and to the Federal Government, which, by consenting to the state compact, becomes one of the compact entity's creators. As such, each individual State lacks meaningful control over the entity, and suits against the entity in federal court pose no affront to a State's "dignity." *Ibid.* Second, in place of the various factors recognized in *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U. S. 391 (1979), for determining arm-of-the-state status, we may now substitute a single overriding criterion, vulnerability of the state treasury. If a State does not fund judgments against an entity, that entity is not within the ambit of the Eleventh Amendment, and suits in federal court may proceed unimpeded. By the Court's reckoning, the state treasury is not implicated on these facts. Neither, it follows, is the Eleventh Amendment.

I disagree with both of these propositions and with the ultimate conclusion the Court draws from them. The Eleventh Amendment, in my view, clothes this interstate entity with immunity from suit in federal courts.

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[3] "We the People of the United States, in Order to form a more perfect Union, establish Justice . . . do ordain and establish this Constitution for the United States of America." U. S. Const. Preamble.

I

Despite several invitations, this Court has not as yet had occasion to find an interstate entity shielded by the Eleventh Amendment from suit in federal court. See *Port Authority Trans-Hudson Corp.* v. *Feeney*, 495 U. S. 299 (1990) (assuming Eleventh Amendment applies, but finding waiver); *Lake Country*, *supra* (finding no reason to believe entity was arm of the State); *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U. S. 275 (1959) (same as *Feeney*). As I read its opinion, the Court now builds upon language in *Lake Country* to create what looks very much like a *per se* rule that the Eleventh Amendment never applies when States act in concert. To be sure, the Court leaves open the possibility that in certain undefined situations, we might find "'good reason'" to confer immunity where States structure an entity to enjoy immunity and we see evidence that "'Congress concurred in that purpose.'" *Ante*, at 43–44, quoting *Lake Country*, *supra*, at 401. But the crux of the Court's analysis rests on its apparent belief that the States ceded their sovereignty in the interstate compact context in the plan of the convention. See *ante*, at 41–42 ("As part of the federal plan prescribed by the Constitution, the States agreed to the power sharing, coordination, and unified action that typify Compact Clause creations"). Such broad reasoning brooks few, if any, exceptions.

In reaching its conclusion, the Court attaches undue significance to the requirement that Congress consent to interstate compacts. Admittedly, the consent requirement performs an important function in our federal scheme. In *Cuyler* v. *Adams*, 449 U. S. 433 (1981), we observed that "'the requirement that Congress approve a compact is to obtain its political judgment: Is the agreement likely to interfere with federal activity in the area, is it likely to disadvantage other States to an important extent, is it a matter that would better be left untouched by state and federal regulation?'" *Id.*, at 440, n. 8, quoting *United States Steel*

Corp. v. *Multistate Tax Comm'n*, 434 U. S. 452, 485 (1978) (White, J., dissenting). But the consent clause neither transforms the nature of state power nor makes Congress a full-fledged participant in the underlying agreement; it requires *only* that Congress "check any infringement of the rights of the national government." J. Story, Commentaries on the Constitution of the United States § 1403, p. 264 (T. Cooley ed. 1873). In consenting, Congress certifies that the States are acting within their boundaries in our federal scheme and that the national interest is not offended. Once Congress consents to cooperative state activity, there is no reason to presume that immunity does not attach. Sovereign immunity, after all, inheres in the permissible exercise of state power. "If congress consent[s], then the states [are] in this respect restored to their original inherent sovereignty; such consent being the sole limitation imposed by the constitution, when given, [leaves] the states as they were before . . . ." *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725 (1838); see also L. Tribe, American Constitutional Law § 6–33, p. 523 (2d ed. 1988).

Even if the Court were correct that the States ceded a portion of their power to Congress in ratifying the consent provision, it would not logically or inevitably follow that any particular entity receives no immunity under the Eleventh Amendment. In *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 455–456 (1976), we held that the States surrendered a portion of their sovereign authority to Congress in ratifying § 5 of the Fourteenth Amendment. Despite this, we have consistently required "'an unequivocal expression of congressional intent to overturn the constitutionally guaranteed immunity of the several States'" before allowing suits against States to proceed in federal court. *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 240 (1985), quoting *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 99 (1984). Assuming, *arguendo*, that States ceded power to Congress to abrogate States' Eleventh Amendment immunity in the

interstate compact realm, our precedents caution that we should be reluctant to infer abrogation in the absence of clear signals from Congress that such a result was, in fact, intended. At the least, I would presume the applicability of the Eleventh Amendment to interstate entities unless Congress clearly and expressly indicates otherwise.

The Court ignores these abrogation cases, however, in favor of exactly the opposite presumption. By the Court's reckoning, the Eleventh Amendment is inapplicable unless we have "good reason" to believe that Congress affirmatively *concurs* in a finding of immunity. In other words, the baseline is no immunity, even if the State has structured the entity in the expectation that immunity will inhere. If, however, Congress manifests a contrary intent, the Eleventh Amendment shields an interstate entity from suit in federal court. Congress, therefore, effectively may dictate the applicability of the Eleventh Amendment in this context. The notion that Congress possesses this power, an extension of dictum in *Lake Country*, 440 U. S., at 401, has little basis in our precedents. Congress may indeed be able to confer on the States what in fact *looks* a lot like Eleventh Amendment immunity; but we have never held that Eleventh Amendment immunity itself attaches at the whim of Congress.

The Court shores up its analysis by observing that each State lacks meaningful power to control an interstate entity. As an initial matter, one wonders how important this insight actually is to the Court's conclusion, given that the opinion elsewhere disclaims reliance on a control inquiry. *Ante*, at 47–48. In any event, that we may sometimes, or even often, in the application of arm-of-the-state analysis, find too attenuated a basis for immunity does not mean we should presume such immunity *altogether* lacking in this context. Two sovereign States acting together may, in most situations, be as deserving of immunity as either State acting apart. I see no reason to vary the analysis for interstate and intrastate entities.

II

The Court wisely recognizes that the six-factor test set forth in *Lake Country*, *supra*, ostensibly a balancing scheme, provides meager guidance for lower courts when the factors point in different directions. Without any indication from this Court as to the weight to ascribe particular criteria, the Courts of Appeals have struggled, variously adding factors, see *Puerto Rico Ports Authority* v. *M/V Manhattan Prince*, 897 F. 2d 1, 9 (CA1 1990) (considering seven factors), distilling factors, see *Benning* v. *Board of Regents of Regency Universities*, 928 F. 2d 775, 777 (CA7 1991) (considering four factors), and deeming certain factors dispositive, compare *Brown* v. *East Central Health Dist.*, 752 F. 2d 615, 617–618 (CA11 1985) (finding state treasury factor determinative), with *Tuveson* v. *Florida Governor's Council on Indian Affairs, Inc.*, 734 F. 2d 730, 732 (CA11 1984) (suggesting that state courts' characterization of entity is most important criterion). See generally Note, Clothing State Governmental Entities with Sovereign Immunity: Disarray in the Eleventh Amendment Arm-of-the-State Doctrine, 92 Colum. L. Rev. 1243 (1992) (summarizing diffuse responses).

In light of this confusion, the Court's effort to focus the *Lake Country* analysis on a single overarching principle is admirable. But its conclusion that the vulnerability of the state treasury is determinative has support neither in our precedents nor in the literal terms of the Eleventh Amendment. The Court takes a *sufficient* condition for Eleventh Amendment immunity, and erroneously transforms it into a *necessary* condition. In so doing, the Court seriously reduces the scope of the Eleventh Amendment, thus underprotecting the state sovereignty at which the Eleventh Amendment is principally directed. See *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 146 (1993) ("The Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity"); *Atascadero*

State Hospital v. *Scanlon*, *supra*, at 238 ("[T]he significance of this Amendment 'lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III' of the Constitution") (citation omitted).

The Court's assertion that the driving concern of the Eleventh Amendment is protection of state treasuries, see *ante*, at 48–49, is belied by the text of the Amendment itself. The Eleventh Amendment bars federal jurisdiction over "any suit in law *or equity*" against the States. As we recognized in *Cory* v. *White*, 457 U. S. 85, 91 (1982), the Eleventh Amendment "by its terms" clearly extends beyond actions seeking money damages. "It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money judgment is sought." *Id.*, at 90. While it may be clear that *Chisholm* v. *Georgia*, 2 Dall. 419 (1793), a money damages action, gave initial impetus to the effort to amend the Constitution, it is equally clear that the product of that effort, the Eleventh Amendment itself, extends far beyond the *Chisholm* facts. Recognizing this, we have long held that the Eleventh Amendment bars suits against States and state entities *regardless* of the nature of relief requested. See *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, *supra*, at 145–146; *Cory*, *supra*, at 90–91; *Alabama* v. *Pugh*, 438 U. S. 781, 782 (1978).

The Court *is* entirely right, however, to suggest that the Eleventh Amendment confers immunity over entities whose liabilities are funded by state taxpayer dollars. If a State were vulnerable at any time to retroactive damages awards in federal court, its ability to set its own agenda, to control its own internal machinery, and to plan for the future—all essential perquisites of sovereignty—would be grievously impaired. I have no quarrel at all with the many cases cited by the Court for the proposition that *if* an entity's bills will be footed by the State, the Eleventh Amendment clearly pre-

cludes the exercise of federal jurisdiction. See, *e. g.*, *Hutsell* v. *Sayre*, 5 F. 3d 996, 999 (CA6 1993) (liability of university tantamount to claim against state treasury); *In re San Juan Dupont Plaza Hotel Fire Litigation*, 888 F. 2d 940, 943–944 (CA1 1989) (70–75% of funds provided by taxpayer dollars).

But the converse cannot also be true. The Eleventh Amendment does not turn a blind eye simply because the state treasury is *not* directly implicated. In my view, the proper question is whether the State possesses sufficient *control* over an entity performing governmental functions that the entity may properly be called an extension of the State itself. Such control can exist even where the State assumes no liability for the entity's debts. We have always respected state flexibility in setting up and maintaining agencies charged with furthering state objectives. See, *e. g.*, *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U. S. 608, 612 (1937) ("How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself"). An emphasis on control, rather than impact on the state treasury, adequately protects state managerial prerogatives while retaining a crucial check against abuse. So long as a State's citizens may, if sufficiently aggravated, vote out an errant government, Eleventh Amendment immunity remains a highly beneficial provision of breathing space and vindication of state sovereignty.

An arm of the State, to my mind, is an entity that undertakes state functions and is politically accountable to the State, and by extension, to the electorate. The critical inquiry, then, should be whether and to what extent the elected state government exercises oversight over the entity. If the lines of oversight are clear and substantial—for example, if the State appoints and removes an entity's governing personnel and retains veto or approval power over an entity's undertakings—then the entity should be deemed an arm of the State for Eleventh Amendment purposes. This test is sufficiently elastic to encompass the Court's treasury fac-

tor. It will be a rare case indeed where the state treasury foots the bill for an entity's wrongs but fails to exercise a healthy degree of oversight over that entity. But the control test goes further than the Court's single factor in assuring state governments the critical flexibility in internal governance that is essential to sovereign authority. See Note, 92 Colum. L. Rev., at 1246–1252 (describing structural innovations among state governments).

The Court dismisses consideration of control altogether, *ante*, at 47–48, noting that States wield ultimate power over cities and counties, units that have never been accorded Eleventh Amendment immunity. See *Lincoln County* v. *Luning*, 133 U. S. 529, 530 (1890). This criticism, based on a supposed line-drawing problem, is off the mark. That "political subdivisions exist solely at the whim and behest of their State," *Port Authority Trans-Hudson Corp.* v. *Feeney*, 495 U. S., at 313 (Brennan, J., concurring), does not mean that state governments actually exercise sufficient oversight to trigger Eleventh Amendment immunity under a control-centered formulation. The inquiry should turn on real, immediate control and oversight, rather than on the potentiality of a State taking action to seize the reins. Virtually every enterprise, municipal or private, flourishes in some sense at the behest of the State. But we have never found the Eleventh Amendment's protections to hinge on this sort of abstraction. The control-centered formulation necessarily looks to the structure and function of state law. If the State delegates control and oversight of an entity to municipalities under state law, the requisite state-level control is lacking, and the Eleventh Amendment does not shield the entity from suit in federal court.

III

Turning to the instant case, I believe that sufficient indicia of control exist to support a finding of immunity for the Port Authority, and hence, for the PATH. New Jersey and New

York each select and may remove 6 of the Port Authority's 12 commissioners. See N. J. Stat. Ann. § 32:1–5 (West 1990); N. Y. Unconsol. Law § 6405 (McKinney 1979). The Governors of each State may veto the actions of that State's commissioners. See N. J. Stat. Ann. § 32:1–17 (West 1990); N. Y. Unconsol. Law § 6417 (McKinney 1979). The quorum requirements specify that "no action of the port authority shall be binding unless taken at a meeting at which at least three of the members from each state are present, and unless a majority of the members from each state present at such meeting but in any event at least three of the members from each state shall vote in favor thereof." N. J. Stat. Ann. § 32:1–17 (West 1990); N. Y. Unconsol. Law § 6417 (McKinney 1979). Accordingly, each Governor's veto power is tantamount to a full veto power over the actions of the Commission. The Port Authority must make annual reports to the state legislatures, which in turn must approve changes in the Port Authority's rules and any new projects. See N. J. Stat. Ann. § 32:1–8 (West 1990); N. Y. Unconsol. Law § 6408 (McKinney 1979). Each State, and by extension, each State's electorate, exercises ample authority over the Port Authority. Without setting forth a shopping list of considerations that govern the control inquiry, suffice it to say that in this case, the whole is exactly the sum of its parts. I would hold that the Eleventh Amendment shields the PATH and Port Authority from suits in federal court. I respectfully dissent.

Syllabus

UNITED STATES *v.* X-CITEMENT VIDEO, INC., ET AL.

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

No. 93–723. Argued October 5, 1994—Decided November 29, 1994

Respondents were convicted under the Protection of Children Against Sexual Exploitation Act of 1977, which prohibits "knowingly" transporting, shipping, receiving, distributing, or reproducing a visual depiction, 18 U. S. C. §§ 2252(a)(1) and (2), if such depiction "involves the use of a minor engaging in sexually explicit conduct," §§ 2252(a)(1)(A) and (2)(A). In reversing, the Ninth Circuit held, *inter alia*, that § 2252 was facially unconstitutional under the First Amendment because it did not require a showing that the defendant knew that one of the performers was a minor.

Held: Because the term "knowingly" in §§ 2252(1) and (2) modifies the phrase "the use of a minor" in subsections (1)(A) and (2)(A), the Act is properly read to include a scienter requirement for age of minority. This Court rejects the most natural grammatical reading, adopted by the Ninth Circuit, under which "knowingly" modifies only the relevant verbs in subsections (1) and (2), and does not extend to the elements of the minority of the performers, or the sexually explicit nature of the material, because they are set forth in independent clauses separated by interruptive punctuation. Some applications of that reading would sweep within the statute's ambit actors who had no idea that they were even dealing with sexually explicit material, an anomalous result that the Court will not assume Congress to have intended. Moreover, *Morissette* v. *United States*, 342 U. S. 246, 271, reinforced by *Staples* v. *United States*, 511 U. S. 600, 619, instructs that the standard presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct, and the minority status of the performers is the crucial element separating legal innocence from wrongful conduct under § 2252. The legislative history, although unclear as to whether Congress intended "knowingly" to extend to performer age, persuasively indicates that the word applies to the sexually explicit conduct depicted, and thereby demonstrates that "knowingly" is emancipated from merely modifying the verbs in subsections (1) and (2). As a matter of grammar, it is difficult to conclude that the word modifies one of the elements in subsections (1)(A) and (2)(A), but not the other. This interpretation is supported by the canon that a

statute is to be construed where fairly possible so as to avoid substantial constitutional questions. Pp. 67–79.

982 F. 2d 1285, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, *post*, p. 79. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 80.

Solicitor General Days argued the cause for the United States. With him on the briefs were *Assistant Attorney General Harris*, *Deputy Solicitor General Kneedler*, *Malcolm L. Stewart*, and *Joel M. Gershowitz*.

Stanley Fleishman argued the cause for respondents. With him on the briefs were *Barry A. Fisher* and *David Grosz*.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Protection of Children Against Sexual Exploitation Act of 1977, as amended, prohibits the interstate transpor-

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*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Lee Fisher*, Attorney General of Ohio, *Richard A. Cordray*, State Solicitor, and *Simon B. Karas*, and by the Attorneys General for their respective jurisdictions as follows: *Jimmy Evans* of Alabama, *Bruce M. Botelho* of Alaska, *Robert Marks* of Hawaii, *Roland W. Burris* of Illinois, *Richard P. Ieyoub* of Louisiana, *Frank J. Kelley* of Michigan, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Michael F. Easley* of North Carolina, *Ernest D. Preate, Jr.*, of Pennsylvania, *Pedro R. Pierluisi* of Puerto Rico, *T. Travis Medlock* of South Carolina, *Mark Barnett* of South Dakota, *Rosalle Simmonds Ballentine* of the Virgin Islands, *James S. Gilmore III* of Virginia, and *James E. Doyle* of Wisconsin; for the National Family Legal Foundation by *Len L. Munsil;* and for the National Law Center for Children and Families et al. by *H. Robert Showers* and *Cathleen A. Cleaver*.

Briefs of *amici curiae* were filed for the American Booksellers Foundation for Free Expression et al. by *Michael A. Bamberger* and *Margaret S. Determan;* for the Law and Linguistics Consortium by *Clark D. Cunningham;* for Morality in Media, Inc., by *Paul J. McGeady;* and for PHE, Inc., by *Bruce J. Ennis, Jr.*, and *John B. Morris, Jr.*

tation, shipping, receipt, distribution, or reproduction of visual depictions of minors engaged in sexually explicit conduct. 18 U. S. C. § 2252. The Court of Appeals for the Ninth Circuit reversed the conviction of respondents for violation of this Act. It held that the Act did not require that the defendant know that one of the performers was a minor, and that it was therefore facially unconstitutional. We conclude that the Act is properly read to include such a requirement.

Rubin Gottesman owned and operated X-Citement Video, Inc. Undercover police posed as pornography retailers and targeted X-Citement Video for investigation. During the course of the sting operation, the media exposed Traci Lords for her roles in pornographic films while under the age of 18. Police Officer Steven Takeshita expressed an interest in obtaining Traci Lords tapes. Gottesman complied, selling Takeshita 49 videotapes featuring Lords before her 18th birthday. Two months later, Gottesman shipped eight tapes of the underage Traci Lords to Takeshita in Hawaii.

These two transactions formed the basis for a federal indictment under the child pornography statute. The indictment charged respondents with one count each of violating 18 U. S. C. §§ 2252(a)(1) and (a)(2), along with one count of conspiracy to do the same under 18 U. S. C. § 371.[1] Evidence at trial suggested that Gottesman had full awareness of Lords' underage performances. *United States* v. *Gottesman*, No. CR 88–295KN, Findings of Fact ¶ 7 (CD Cal., Sept. 20, 1989), App. to Pet. for Cert. 39a ("Defendants knew that Traci Lords was underage when she made the films defendant's *[sic]* transported or shipped in interstate commerce"). The District Court convicted respondents of all three counts. On appeal, Gottesman argued, *inter alia*, that the Act was facially unconstitutional because it lacked a necessary scien-

[1] The indictment also charged six counts of violating federal obscenity statutes and two racketeering counts involving the same. Respondents were acquitted of these charges.

ter requirement and was unconstitutional as applied because the tapes at issue were not child pornography. The Ninth Circuit remanded to the District Court for reconsideration in light of *United States* v. *Thomas*, 893 F. 2d 1066 (CA9), cert. denied, 498 U. S. 826 (1990). In that case, the Ninth Circuit had held § 2252 did not contain a scienter requirement, but had not reached the constitutional questions. On remand, the District Court refused to set aside the judgment of conviction.

On appeal for the second time, Gottesman reiterated his constitutional arguments. This time, the court reached the merits of his claims and, by a divided vote, found § 2252 facially unconstitutional. The court first held that 18 U. S. C. § 2256 met constitutional standards in setting the age of majority at age 18, substituting lascivious for lewd, and prohibiting actual or simulated bestiality and sadistic or masochistic abuse. 982 F. 2d 1285, 1288–1289 (CA9 1992). It then discussed § 2252, noting it was bound by its conclusion in *Thomas* to construe the Act as lacking a scienter requirement for the age of minority. The court concluded that case law from this Court required that the defendant must have knowledge at least of the nature and character of the materials. 982 F. 2d, at 1290, citing *Smith* v. *California*, 361 U. S. 147 (1959); *New York* v. *Ferber*, 458 U. S. 747 (1982); and *Hamling* v. *United States*, 418 U. S. 87 (1974). The court extended these cases to hold that the First Amendment requires that the defendant possess knowledge of the particular fact that one performer had not reached the age of majority at the time the visual depiction was produced. 982 F. 2d, at 1291. Because the court found the statute did not require such a showing, it reversed respondents' convictions. We granted certiorari, 510 U. S. 1163 (1994), and now reverse.

Title 18 U. S. C. § 2252 (1988 ed. and Supp. V) provides, in relevant part:

"(a) Any person who—

"(1) knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

"(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual depiction is of such conduct;

"(2) knowingly receives, or distributes, any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if—

"(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual depiction is of such conduct;

. . . . .

"shall be punished as provided in subsection (b) of this section."

The critical determination which we must make is whether the term "knowingly" in subsections (1) and (2) modifies the phrase "the use of a minor" in subsections (1)(A) and (2)(A). The most natural grammatical reading, adopted by the Ninth Circuit, suggests that the term "knowingly" modifies only the surrounding verbs: transports, ships, receives, distributes, or reproduces. Under this construction, the word "knowingly" would not modify the elements of the minority of the performers, or the sexually explicit nature of the material, because they are set forth in independent clauses separated by interruptive punctuation. But we do not think this is the end of the matter, both because of anomalies which

result from this construction, and because of the respective presumptions that some form of scienter is to be implied in a criminal statute even if not expressed, and that a statute is to be construed where fairly possible so as to avoid substantial constitutional questions.

If the term "knowingly" applies only to the relevant verbs in § 2252—transporting, shipping, receiving, distributing, and reproducing—we would have to conclude that Congress wished to distinguish between someone who knowingly transported a particular package of film whose contents were unknown to him, and someone who unknowingly transported that package. It would seem odd, to say the least, that Congress distinguished between someone who inadvertently dropped an item into the mail without realizing it, and someone who consciously placed the same item in the mail, but was nonetheless unconcerned about whether the person had any knowledge of the prohibited contents of the package.

Some applications of respondents' position would produce results that were not merely odd, but positively absurd. If we were to conclude that "knowingly" only modifies the relevant verbs in § 2252, we would sweep within the ambit of the statute actors who had no idea that they were even dealing with sexually explicit material. For instance, a retail druggist who returns an uninspected roll of developed film to a customer "knowingly distributes" a visual depiction and would be criminally liable if it were later discovered that the visual depiction contained images of children engaged in sexually explicit conduct. Or, a new resident of an apartment might receive mail for the prior resident and store the mail unopened. If the prior tenant had requested delivery of materials covered by § 2252, his residential successor could be prosecuted for "knowing receipt" of such materials. Similarly, a Federal Express courier who delivers a box in which the shipper has declared the contents to be "film" "knowingly transports" such film. We do not assume that Congress, in passing laws, intended such results. *Public Citi-*

zen v. *Department of Justice*, 491 U. S. 440, 453–455 (1989); *United States* v. *Turkette*, 452 U. S. 576, 580 (1981).

Our reluctance to simply follow the most grammatical reading of the statute is heightened by our cases interpreting criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them. The landmark opinion in *Morissette* v. *United States*, 342 U. S. 246 (1952), discussed the common-law history of *mens rea* as applied to the elements of the federal embezzlement statute. That statute read: "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States . . . [s]hall be fined." 18 U. S. C. § 641, cited in *Morissette*, 342 U. S., at 248, n. 2. Perhaps even more obviously than in the statute presently before us, the word "knowingly" in its isolated position suggested that it only attached to the verb "converts," and required only that the defendant intentionally assume dominion over the property. But the Court used the background presumption of evil intent to conclude that the term "knowingly" also required that the defendant have knowledge of the facts that made the taking a conversion—*i. e.*, that the property belonged to the United States. *Id.*, at 271. See also *United States* v. *United States Gypsum Co.*, 438 U. S. 422, 438 (1978) ("[F]ar more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement").

Liparota v. *United States*, 471 U. S. 419 (1985), posed a challenge to a federal statute prohibiting certain actions with respect to food stamps. The statute's use of "knowingly" could be read only to modify "uses, transfers, acquires, alters, or possesses" or it could be read also to modify "in any manner not authorized by [the statute]." Noting that neither interpretation posed constitutional problems, *id.*, at 424, n. 6, the Court held the scienter requirement applied to

both elements by invoking the background principle set forth in *Morissette*. In addition, the Court was concerned with the broader reading which would "criminalize a broad range of apparently innocent conduct." 471 U. S., at 426. Imposing criminal liability on an unwitting food stamp recipient who purchased groceries at a store that inflated its prices to such purchasers struck the Court as beyond the intended reach of the statute.

The same analysis drove the recent conclusion in *Staples* v. *United States*, 511 U. S. 600 (1994), that to be criminally liable a defendant must know that his weapon possessed automatic firing capability so as to make it a machinegun as defined by the National Firearms Act. Congress had not expressly imposed any *mens rea* requirement in the provision criminalizing the possession of a firearm in the absence of proper registration. 26 U. S. C. § 5861(d). The Court first rejected the argument that the statute described a public welfare offense, traditionally excepted from the background principle favoring scienter. *Morissette*, *supra*, at 255. The Court then expressed concern with a statutory reading that would criminalize behavior that a defendant believed fell within "a long tradition of widespread lawful gun ownership by private individuals." *Staples*, 511 U. S., at 610. The Court also emphasized the harsh penalties attaching to violations of the statute as a "significant consideration in determining whether the statute should be construed as dispensing with *mens rea*." *Id.*, at 616.

Applying these principles, we think the Ninth Circuit's plain language reading of § 2252 is not so plain. First, § 2252 is not a public welfare offense. Persons do not harbor settled expectations that the contents of magazines and film are generally subject to stringent public regulation. In fact, First Amendment constraints presuppose the opposite view. Rather, the statute is more akin to the common-law offenses against the "state, the person, property, or public morals," *Morissette*, *supra*, at 255, that presume a scienter require-

ment in the absence of express contrary intent.[2] Second, *Staples'* concern with harsh penalties looms equally large respecting § 2252: Violations are punishable by up to 10 years in prison as well as substantial fines and forfeiture. 18 U. S. C. §§ 2252(b), 2253, 2254. See also *Morissette*, *supra*, at 260.

Morissette, reinforced by *Staples*, instructs that the presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct. *Staples* held that the features of a gun as technically described by the firearm registration Act was such an element. Its holding rested upon "the nature of the particular device or substance Congress has subjected to regulation and the expectations that individuals may legitimately have in dealing with the regulated items." *Staples*, *supra*, at 619. Age of minority in § 2252 indisputably possesses the same status as an elemental fact because nonobscene, sexually explicit materials involving persons over the age of 17 are protected by the First Amendment. *Alexander* v. *United States*, 509 U. S. 544, 549–550 (1993); *Sable Communications of Cal., Inc.* v. *FCC*, 492 U. S. 115, 126 (1989); *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 224 (1990); *Smith* v. *California*, 361 U. S., at 152.[3] In the light of these

[2] *Morissette*'s treatment of the common-law presumption of *mens rea* recognized that the presumption expressly excepted "sex offenses, such as rape, in which the victim's actual age was determinative despite defendant's reasonable belief that the girl had reached age of consent." 342 U. S., at 251, n. 8. But as in the criminalization of pornography production at 18 U. S. C. § 2251, see *infra*, at 76, n. 5, the perpetrator confronts the underage victim personally and may reasonably be required to ascertain that victim's age. The opportunity for reasonable mistake as to age increases significantly once the victim is reduced to a visual depiction, unavailable for questioning by the distributor or receiver. Thus we do not think the common-law treatment of sex offenses militates against our construction of the present statute.

[3] In this regard, age of minority is not a "jurisdictional fact" that enhances an offense otherwise committed with an evil intent. See, *e. g.*, *United States* v. *Feola*, 420 U. S. 671 (1975). There, the Court did not

decisions, one would reasonably expect to be free from regulation when trafficking in sexually explicit, though not obscene, materials involving adults. Therefore, the age of the performers is the crucial element separating legal innocence from wrongful conduct.

The legislative history of the statute evolved over a period of years, and perhaps for that reason speaks somewhat indistinctly to the question whether "knowingly" in the statute modifies the elements of subsections (1)(A) and (2)(A)—that the visual depiction involves the use of a minor engaging in sexually explicit conduct—or merely the verbs "transport or ship" in subsection (1) and "receive or distribute . . . [or] reproduce" in subsection (2). In 1959, we held in *Smith* v. *California*, *supra*, that a California statute that dispensed with any *mens rea* requirement as to the contents of an obscene book would violate the First Amendment. *Id.*, at 154. When Congress began dealing with child pornography in 1977, the content of the legislative debates suggest that it was aware of this decision. See, *e. g.*, 123 Cong. Rec. 30935 (1977) ("It is intended that they have knowledge of the type of material . . . proscribed by this bill. The legislative history should be clear on that so as to remove any chance it will lead into constitutional problems"). Even if that were not the case, we do not impute to Congress an intent to pass legislation that is inconsistent with the Constitution as construed by this Court. *Yates* v. *United States*, 354 U. S. 298, 319 (1957) ("In [construing the statute] we should not assume that Congress chose to disregard a constitutional danger zone so clearly marked"). When first passed, § 2252 pun-

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require knowledge of "jurisdictional facts"—that the target of an assault was a federal officer. Criminal intent serves to separate those who understand the wrongful nature of their act from those who do not, but does not require knowledge of the precise consequences that may flow from that act once aware that the act is wrongful. *Id.*, at 685. Cf. *Hamling* v. *United States*, 418 U. S. 87, 120 (1974) (knowledge that the materials at issue are legally obscene not required).

ished one who "knowingly transports or ships in interstate or foreign commerce or mails, for the purpose of sale or distribution for sale, any *obscene* visual or print medium" if it involved the use of a minor engaged in sexually explicit conduct. Pub. L. 95–225, 92 Stat. 7 (emphasis added). Assuming awareness of *Smith*, at a minimum, "knowingly" was intended to modify "obscene" in the 1978 version.

In 1984, Congress amended the statute to its current form, broadening its application to those sexually explicit materials that, while not obscene as defined by *Miller* v. *California*, 413 U. S. 15 (1973),[4] could be restricted without violating the First Amendment as explained by *New York* v. *Ferber*, 458 U. S. 747 (1982). When Congress eliminated the adjective "obscene," all of the elements defining the character and content of the materials at issue were relegated to subsections (1)(a) and (2)(a). In this effort to expand the child pornography statute to its full constitutional limits, Congress nowhere expressed an intent to eliminate the *mens rea* requirement that had previously attached to the character and content of the material through the word obscene.

The Committee Reports and legislative debate speak more opaquely as to the desire of Congress for a scienter requirement with respect to the age of minority. An early form of the proposed legislation, S. 2011, was rejected principally because it failed to distinguish between obscene and nonobscene materials. S. Rep. No. 95–438, p. 12 (1977). In evaluating the proposal, the Justice Department offered its thoughts:

> "[T]he word 'knowingly' in the second line of section 2251 is unnecessary and should be stricken. . . . Unless 'knowingly' is deleted here, the bill might be subject to an interpretation requiring the Government to prove

[4] The *Miller* test for obscenity asks whether the work, taken as a whole, "appeals to the prurient interest," "depicts or describes [sexual conduct] in a patently offensive way," and "lacks serious literary, artistic, political, or scientific value." *Miller*, 413 U. S., at 24.

> the defendant's knowledge of everything that follows 'knowingly', including the age of the child. We assume that it is not the intention of the drafters to require the Government to prove that the defendant knew the child was under age sixteen but merely to prove that the child was, in fact, less than age sixteen. . . .
>
> "On the other hand, the use of the word 'knowingly' in subsection 2252(a)(1) is appropriate to make it clear that the bill does not apply to common carriers or other innocent transporters who have no knowledge of the nature or character of the material they are transporting. To clarify the situation, the legislative history might reflect that the defendant's knowledge of the age of the child is not an element of the offense but that the bill is not intended to apply to innocent transportation with no knowledge of the nature or character of the material involved." *Id.*, at 28–29.

Respondents point to this language as an unambiguous revelation that Congress omitted a scienter requirement. But the bill eventually reported by the Senate Judiciary Committee adopted some, but not all, of the Department's suggestions; most notably, it restricted the prohibition in § 2251 to obscene materials. *Id.*, at 2. The Committee did not make any clarification with respect to scienter as to the age of minority. In fact, the version reported by the Committee eliminated § 2252 altogether. *Ibid.* At that juncture, Senator Roth introduced an amendment which would be another precursor of § 2252. In one paragraph, the amendment forbade any person to "knowingly transport [or] ship . . . [any] visual medium depicting a minor engaged in sexually explicit conduct." 123 Cong. Rec. 33047 (1977). In an exchange during debate, Senator Percy inquired:

> "Would this not mean that the distributor or seller must have either, first, actual knowledge that the materials do contain child pornographic depictions or, second, cir-

> cumstances must be such that he should have had such actual knowledge, and that mere inadvertence or negligence would not alone be enough to render his actions unlawful?" *Id.*, at 33050.

Senator Roth replied:

> "That is absolutely correct. This amendment, limited as it is by the phrase 'knowingly,' insures that only those sellers and distributors who are consciously and deliberately engaged in the marketing of child pornography . . . are subject to prosecution . . . ." *Ibid.*

The parallel House bill did not contain a comparable provision to § 2252 of the Senate bill, and limited § 2251 prosecutions to obscene materials. The Conference Committee adopted the substance of the Roth amendment in large part, but followed the House version by restricting the proscribed depictions to obscene ones. The new bill did restructure the § 2252 provision somewhat, setting off the age of minority requirement in a separate subclause. S. Conf. Rep. No. 95–601, p. 2 (1977). Most importantly, the new bill retained the adverb "knowingly" in § 2252 while simultaneously deleting the word "knowingly" from § 2251(a). The Conference Committee explained the deletion in § 2251(a) as reflecting an "intent that it is not a necessary element of a prosecution that the defendant knew the actual age of the child." *Id.*, at 5.[5] Respondents point to the appearance of "knowingly" in

[5] The difference in congressional intent with respect to § 2251 versus § 2252 reflects the reality that producers are more conveniently able to ascertain the age of performers. It thus makes sense to impose the risk of error on producers. *United States* v. *United States District Court for Central District of California,* 858 F. 2d 534, 543, n. 6 (CA9 1988). Although producers may be convicted under § 2251(a) without proof they had knowledge of age, Congress has independently required both primary and secondary producers to record the ages of performers with independent penalties for failure to comply. 18 U. S. C. §§ 2257(a) and (i) (1988 ed. and Supp. V); *American Library Assn.* v. *Reno,* 33 F. 3d 78 (CADC 1994).

§ 2251(c) and argue that § 2252 ought to be read like § 2251. But this argument depends on the conclusion that § 2252(c) does not include a knowing requirement, a premise that respondents fail to support. Respondents offer in support of their premise only the legislative history discussing an intent to exclude a scienter requirement from *§ 2251(a)*. Because §§ 2251(a) and 2251(c) were passed at different times and contain different wording, the intent to exclude scienter from § 2251(a) does not imply an intent to exclude scienter from § 2251(c).[6]

The legislative history can be summarized by saying that it persuasively indicates that Congress intended that the term "knowingly" apply to the requirement that the depiction be of sexually explicit conduct; it is a good deal less clear from the Committee Reports and floor debates that Congress intended that the requirement extend also to the age of the performers. But, turning once again to the statute itself, if the term "knowingly" applies to the sexually explicit conduct depicted, it is emancipated from merely modifying the verbs in subsections (1) and (2). And as a matter of grammar it is

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[6] Congress amended § 2251 to insert subsection (c) in 1986. Pub. L. 99–628, 100 Stat. 3510. That provision created new offenses relating to the advertising of the availability of child pornography or soliciting children to participate in such depictions. The legislative history of § 2251(c) does address the scienter requirement: "The government must prove that the defendant knew the character of the visual depictions as depicting a minor engaging in sexually explicit conduct, *but need not prove that the defendant actually knew the person depicted was in fact under 18 years of age* or that the depictions violated Federal law." H. R. Rep. No. 99–910, p. 6 (1986). It may be argued that since the House Committee Report rejects any requirement of scienter as to the age of minority for § 2251(c), the House Committee thought that there was no such requirement in § 2252. But the views of one Congress as to the meaning of an Act passed by an earlier Congress are not ordinarily of great weight, *United States* v. *Clark*, 445 U. S. 23, 33, n. 9 (1980), citing *United States* v. *Southwestern Cable Co.*, 392 U. S. 157, 170 (1968), and the views of the committee of one House of another Congress are of even less weight, *Pierce* v. *Underwood*, 487 U. S. 552, 566 (1988).

difficult to conclude that the word "knowingly" modifies one of the elements in subsections (1)(A) and (2)(A), but not the other.

A final canon of statutory construction supports the reading that the term "knowingly" applies to both elements. Cases such as *Ferber*, 458 U. S., at 765 ("As with obscenity laws, criminal responsibility may not be imposed without some element of scienter on the part of the defendant"); *Smith* v. *California*, 361 U. S. 147 (1959); *Hamling* v. *United States*, 418 U. S. 87 (1974); and *Osborne* v. *Ohio*, 495 U. S. 103, 115 (1990), suggest that a statute completely bereft of a scienter requirement as to the age of the performers would raise serious constitutional doubts. It is therefore incumbent upon us to read the statute to eliminate those doubts so long as such a reading is not plainly contrary to the intent of Congress. *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988).

For all of the foregoing reasons, we conclude that the term "knowingly" in § 2252 extends both to the sexually explicit nature of the material and to the age of the performers.

As an alternative grounds for upholding the reversal of their convictions, respondents reiterate their constitutional challenge to 18 U. S. C. § 2256. These claims were not encompassed in the question on which this Court granted certiorari, but a prevailing party, without cross-petitioning, is "entitled under our precedents to urge any grounds which would lend support to the judgment below." *Dayton Bd. of Ed.* v. *Brinkman*, 433 U. S. 406, 419 (1977). Respondents argue that § 2256 is unconstitutionally vague and overbroad because it makes the age of majority 18, rather than 16 as did the New York statute upheld in *New York* v. *Ferber*, *supra*, and because Congress replaced the term "lewd" with the term "lascivious" in defining illegal exhibition of the genitals of children. We regard these claims as insubstantial,

and reject them for the reasons stated by the Court of Appeals in its opinion in this case.

Respondents also argued below that their indictment was fatally defective because it did not contain a scienter requirement on the age of minority. The Court of Appeals did not reach this issue because of its determination that § 2252 was unconstitutional on its face, and we decline to decide it here.

The judgment of the Court of Appeals is

Reversed.

JUSTICE STEVENS, concurring.

In my opinion, the normal, commonsense reading of a subsection of a criminal statute introduced by the word "knowingly" is to treat that adverb as modifying each of the elements of the offense identified in the remainder of the subsection. Title 18 U. S. C. § 2252(a)(1) (1988 ed. and Supp. V) reads as follows:

> "(a) Any person who—
>
> "(1) *knowingly* transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—
>
> "(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
>
> "(B) such visual depiction is of such conduct." (Emphasis added.)

Surely reading this provision to require proof of scienter for each fact that must be proved is far more reasonable than adding such a requirement to a statutory offense that contains no scienter requirement whatsoever. Cf. *Staples* v. *United States*, 511 U. S. 600, 624 (1994) (STEVENS, J., dissenting). Indeed, as the Court demonstrates, *ante*, at 69–70, to give the statute its most grammatically correct reading, and merely require knowledge that a "visual depiction" has been

shipped in interstate commerce, would be ridiculous. Accordingly, I join the Court's opinion without qualification.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Today's opinion is without antecedent. None of the decisions cited as authority support interpreting an explicit statutory scienter requirement in a manner that its language simply will not bear. *Staples* v. *United States*, 511 U. S. 600 (1994), discussed *ante*, at 71, and *United States* v. *United States Gypsum Co.*, 438 U. S. 422 (1978), discussed *ante*, at 70, applied the background common-law rule of scienter to a statute that said *nothing* about the matter. *Morissette* v. *United States*, 342 U. S. 246 (1952), discussed *ante*, at 70, applied that same background rule to a statute that *did* contain the word "knowingly," in order to conclude that "knowingly converts" requires knowledge not merely of the fact of one's assertion of dominion over property, but also knowledge of the fact that that assertion *is* a conversion, *i. e.*, is wrongful.* *Liparota* v. *United States*, 471 U. S. 419 (1985), discussed *ante*, at 70, again involved a statute that did contain the word "'knowingly,'" used in such a fashion that it could reasonably and grammatically be thought to apply (1) only to the phrase "'uses, transfers, acquires, alters, or possesses'" (which would cause a defendant to be liable without wrongful intent), or (2) also to the later phrase "'in any manner not authorized by [the statute].'" Once again applying the background rule of scienter, the latter reasonable and permissible reading was preferred.

There is no way in which any of these cases, or all of them in combination, can be read to stand for the sweeping propo-

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*The case did not involve, as the Court claims, a situation in which, "even more obviously than in the statute presently before us, the word 'knowingly' in its isolated position suggested that it only attached to the verb 'converts,'" *ante*, at 70, and we nonetheless applied it as well to another word. The issue was simply the meaning of "knowingly converts."

sition that "the presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct," *ante*, at 72, *even when the plain text of the statute says otherwise.* All those earlier cases employ the presumption as a rule of interpretation which applies when Congress has not addressed the question of criminal intent (*Staples* and *Gypsum*), or when the import of what it has said on that subject is ambiguous (*Morissette* and *Liparota*). Today's opinion converts the rule of interpretation into a rule of law, contradicting the plain import of what Congress has specifically prescribed regarding criminal intent.

In *United States* v. *Thomas*, 893 F. 2d 1066, 1070 (CA9), cert. denied, 498 U. S. 826 (1990), the Ninth Circuit interpreted 18 U. S. C. § 2252 to require knowledge of neither the fact that the visual depiction portrays sexually explicit conduct, nor the fact that a participant in that conduct was a minor. The panel in the present case accepted that interpretation. See 982 F. 2d 1285, 1289 (CA9 1992). To say, as the Court does, that this interpretation is "the most grammatical reading," *ante*, at 70, or "[t]he most natural grammatical reading," *ante*, at 68, is understatement to the point of distortion—rather like saying that the ordinarily preferred total for two plus two is four. The Ninth Circuit's interpretation is in fact and quite obviously *the only grammatical reading.* If one were to rack his brains for a way to express the thought that the knowledge requirement in subsection (a)(1) applied *only* to the transportation or shipment of visual depiction in interstate or foreign commerce, and *not* to the fact that that depiction was produced by use of a minor engaging in sexually explicit conduct, and was a depiction of that conduct, *it would be impossible* to construct a sentence structure that more clearly conveys that thought, and that thought alone. The word "knowingly" is contained, not merely in a distant phrase, but in an entirely separate clause from the one into which today's opinion inserts it. The

equivalent, in expressing a simpler thought, would be the following: "Anyone who knowingly double-parks will be subject to a $200 fine if that conduct occurs during the 4:30-to-6:30 rush hour." It could not be clearer that the scienter requirement applies only to the double-parking, and not to the time of day. So also here, it could not be clearer that it applies only to the transportation or shipment of visual depiction in interstate or foreign commerce. There is no doubt. There is no ambiguity. There is no possible "less natural" but nonetheless permissible reading.

I have been willing, in the case of civil statutes, to acknowledge a doctrine of "scrivener's error" that permits a court to give an unusual (though not unheard-of) meaning to a word which, if given its normal meaning, would produce an absurd and arguably unconstitutional result. See *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 527 (1989) (SCALIA, J., concurring). Even if I were willing to stretch that doctrine so as to give the problematic text a meaning it cannot possibly bear; and even if I were willing to extend the doctrine to criminal cases in which its application would produce conviction rather than acquittal; it would still have no proper bearing here. For the *sine qua non* of any "scrivener's error" doctrine, it seems to me, is that the meaning genuinely intended but inadequately expressed must be absolutely clear; otherwise we might be rewriting the statute rather than correcting a technical mistake. That condition is not met here.

The Court acknowledges that "it is a good deal less clear from the Committee Reports and floor debates that Congress intended that the requirement [of scienter] extend . . . to the age of the performers." *Ante*, at 77. That is surely so. In fact, it seems to me that the dominant (if not entirely uncontradicted) view expressed in the legislative history is that set forth in the statement of the Carter Administration Justice Department which introduced the original bill: "[T]he defendant's knowledge of the age of the child is not an ele-

ment of the offense but . . . the bill is not intended to apply to innocent transportation with no knowledge of the nature or character of the material involved." S. Rep. No. 95–438, p. 29 (1977). As applied to the final bill, this would mean that the scienter requirement applies to the element of the crime that the depiction be of "sexually explicit conduct," but not to the element that the depiction "involv[e] the use of a minor engaging" in such conduct. See 18 U. S. C. §§ 2252(a)(1)(A) and (a)(2)(A). This is the interpretation that was argued by the United States before the Ninth Circuit. See 982 F. 2d, at 1289.

The Court rejects this construction of the statute for two reasons: First, because "as a matter of grammar it is difficult to conclude that the word 'knowingly' modifies one of the elements in subsections (1)(A) and (2)(A), but not the other." *Ante*, at 77–78. But as I have described, "as a matter of grammar" it is also difficult (nay, impossible) to conclude that the word "knowingly" modifies *both* of those elements. It is really quite extraordinary for the Court, fresh from having, as it says, *ibid.*, "emancipated" the adverb from the grammatical restriction that renders it inapplicable to the *entire* conditional clause, suddenly to insist that the demands of syntax must prevail over legislative intent—thus producing an end result that accords *neither* with syntax *nor* with supposed intent. If what the statute says must be ignored, one would think we might settle at least for what the statute was meant to say; but alas, we are told, what the statute says prevents this.

The Court's second reason is even worse: "[A] statute completely bereft of a scienter requirement as to the age of the performers would raise serious constitutional doubts." *Ante*, at 78. In my view (as in the apparent view of the Government before the Court of Appeals) that is not true. The Court derives its "serious constitutional doubts" from the fact that "sexually explicit materials involving persons over the age of 17 are protected by the First Amendment,"

ante, at 72. We have made it entirely clear, however, that the First Amendment protection accorded to such materials is not as extensive as that accorded to other speech. "[T]here is surely a less vital interest in the uninhibited exhibition of material that is on the borderline between pornography and artistic expression than in the free dissemination of ideas of social and political significance . . . ." *Young* v. *American Mini Theatres, Inc.*, 427 U. S. 50, 61 (1976). See also *id.*, at 70–71 ("[E]ven though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate . . .") (opinion of STEVENS, J., joined by Burger, C. J., and White and REHNQUIST, JJ.). Cf. *FCC* v. *Pacifica Foundation*, 438 U. S. 726, 743 (1978) (While some broadcasts of patently offensive references to excretory and sexual organs and activities may be protected, "they surely lie at the periphery of First Amendment concern"). Let us be clear about what sort of pictures are at issue here. They are not the sort that will likely be found in a catalog of the National Gallery or the Metropolitan Museum of Art. "'[S]exually explicit conduct,'" as defined in the statute, does not include mere nudity, but only *conduct* that consists of "sexual intercourse . . . between persons of the same or opposite sex," "bestiality," "masturbation," "sadistic or masochistic abuse," and "lascivious exhibition of the genitals or pubic area." See 18 U. S. C. § 2256(2). What is involved, in other words, is not the clinical, the artistic, nor even the risqué, but hard-core pornography. Indeed, I think it entirely clear that all of what is involved constitutes not merely pornography but fully proscribable obscenity, except to the extent it is joined with some other material (or perhaps some manner of presentation) that has artistic or other social value. See *Miller* v. *California*, 413 U. S. 15, 24 (1973). (Such a requirement cannot be imposed, of

course, upon fully protected speech: one can shout "Down with the Republic!," "Hooray for Mozart!," or even "Twenty-Three Skidoo!," *whether or not* that expression is joined with something else of social value.) And whereas what is on one side of the balance in the present case is this material of minimal First Amendment concern, the Court has described what is on the other side—"prevention of sexual exploitation and abuse of children"—as "a government objective of surpassing importance." *New York* v. *Ferber*, 458 U. S. 747, 757 (1982).

I am not concerned that holding the purveyors and receivers of this material absolutely liable for supporting the exploitation of minors will deter any activity the United States Constitution was designed to protect. But I am concerned that the Court's suggestion of the unconstitutionality of such absolute liability will cause Congress to leave the world's children inadequately protected against the depredations of the pornography trade. As we recognized in *Ferber*, *supra*, at 766, n. 19, the producers of these materials are not always readily found, and are often located abroad; and knowledge of the performers' age by the dealers who specialize in child pornography, and by the purchasers who sustain that market, is obviously hard to prove. The First Amendment will lose none of its value to a free society if those who knowingly place themselves in the stream of pornographic commerce are obliged to make sure that they are not subsidizing child abuse. It is no more unconstitutional to make persons who knowingly deal in hard-core pornography criminally liable for the underage character of their entertainers than it is to make men who engage in consensual fornication criminally liable (in statutory rape) for the underage character of their partners.

I would dispose of the present case, as the Ninth Circuit did, by reading the statute as it is written: to provide criminal penalties for the knowing transportation or shipment of a visual depiction in interstate or foreign commerce, and for

the knowing receipt or distribution of a visual depiction so transported or shipped, if that depiction was (whether the defendant knew it or not) a portrayal of a minor engaging in sexually explicit conduct. I would find the statute, as so interpreted, to be unconstitutional since, by imposing criminal liability upon those not knowingly dealing in pornography, it establishes a severe deterrent, not narrowly tailored to its purposes, upon fully protected First Amendment activities. See *Smith* v. *California*, 361 U. S. 147, 153–154 (1959). This conclusion of unconstitutionality is of course no ground for going back to reinterpret the statute, making it say something that it does not say, but that *is* constitutional. Not every construction, but only "'every *reasonable* construction must be resorted to, in order to save a statute from unconstitutionality.'" *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988) (quoting *Hooper* v. *California*, 155 U. S. 648, 657 (1895)) (emphasis added). "'"Although this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute . . ." or judicially rewriting it.'" *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 841 (1986) (quoting *Aptheker* v. *Secretary of State*, 378 U. S. 500, 515 (1964)). Otherwise, there would be no such thing as an unconstitutional statute. As I have earlier discussed, in the present case no reasonable alternative construction exists, neither any that can be coaxed from the text nor any that can be substituted for the text on "scrivener's error" grounds. I therefore agree with the Ninth Circuit that respondents' conviction cannot stand.

I could understand (though I would not approve of) a disposition which, in order to uphold this statute, departed from its text as little as possible in order to sustain its constitutionality—*i. e.*, a disposition applying the scienter requirement to the pornographic nature of the materials, but not to the age of the performers. I can neither understand nor

approve of the disposition urged by the United States before this Court and adopted today, which not only rewrites the statute, but (1) rewrites it more radically than its constitutional survival demands, and (2) raises baseless constitutional doubts that will impede congressional enactment of a law providing greater protection for the child-victims of the pornography industry. The Court today saves a single conviction by putting in place a relatively toothless child-pornography law that Congress did not enact, and by rendering congressional strengthening of that new law more difficult. I respectfully dissent.

Syllabus

FEDERAL ELECTION COMMISSION *v.* NRA POLITICAL VICTORY FUND ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93–1151. Argued October 11, 1994—Decided December 6, 1994

Petitioner Federal Election Commission (FEC) brought this civil action against respondents seeking to enforce a provision of the Federal Election Campaign Act of 1971 (FECA). The District Court ruled against respondents. The Court of Appeals reversed and entered its judgment on October 22, 1993. Without first seeking or obtaining the Solicitor General's authorization, the FEC filed in its own name a petition for a writ of certiorari on January 18, 1994, two days before the expiration of the 90-day filing period mandated by 28 U. S. C. § 2101(c). The United States filed a brief contending that the FEC lacked statutory authority to represent itself in this case in this Court, but that, pursuant to 28 U. S. C. § 518(a) and its implementing regulation, the Solicitor General had authorized the FEC's petition by letter dated May 26, 1994. This authorization came more than 120 days after the § 2101(c) filing deadline had passed. The FEC filed a brief in response asserting that it has independent statutory authority to represent itself in this Court.

Held:

1. The FEC may not independently file a petition for certiorari in this Court under 2 U. S. C. § 437d(a)(6). That statute empowers the FEC "to . . . appeal any civil action . . . to enforce the provisions of [the FECA]," but it omits any mention of authority to file a "petition for a writ of certiorari" or otherwise conduct litigation before the Supreme Court. By contrast, 26 U. S. C. §§ 9010(d) and 9040(d) explicitly authorize the FEC to "appeal from, *and to petition the Supreme Court for certiorari to review*" (emphasis added), judgments in actions to enforce the Presidential election fund laws, thereby indicating a congressional intent to restrict the FEC's independent litigating authority in this Court to such actions. The contrasting language in §§ 9040(d) and 437d(a)(6) is particularly telling because these sections were originally enacted as part of the same legislation. The mere existence of sound policy reasons for providing the FEC with independent litigating authority in this Court for actions enforcing the FECA does not demonstrate a congressional intent to alter the Solicitor General's prerogative under § 518(a) to conduct and argue the Federal Government's litigation

here, since that statutory authority itself represents a policy choice by Congress. Nor is it dispositive that the FEC has represented itself before this Court in several FECA enforcement cases in the past, since none of those cases involved a challenge to the Court's jurisdiction. Moreover, the provisions authorizing the FEC to litigate in the federal courts are not the sort of substantive provisions which can be said to be within the agency's province to interpret. Pp. 90–97.

2. The Solicitor General's "after-the-fact" authorization does not relate back to the date of the FEC's unauthorized filing so as to make it timely. Under governing agency law principles, particularly the doctrine of ratification, the authorization simply came too late in the day to be effective: The Solicitor General attempted to ratify the FEC's filing on May 26, 1994, but he could not himself have filed a certiorari petition on that date because the 90-day time period for filing a petition had already expired. This result is entirely consistent with, and perhaps required by, § 2101(c). If the Solicitor General were allowed to retroactively authorize untimely agency petitions, he would have the unilateral power to extend the 90-day statutory period by days, weeks, or, as here, even months. This would impermissibly blur § 2101(c)'s jurisdictional deadline. Pp. 98–99.

Certiorari dismissed for want of jurisdiction. Reported below: 6 F. 3d 821.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 100. GINSBURG, J., took no part in the consideration or decision of the case.

Lawrence M. Noble argued the cause for petitioner. With him on the briefs were *Richard B. Bader* and *Vivien Clair.*

Deputy Solicitor General Bender argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days*, *Assistant Attorneys General Dellinger* and *Hunger*, *Malcolm L. Stewart*, and *Douglas N. Letter.*

Charles J. Cooper argued the cause for respondents. With him on the brief were *Michael A. Carvin* and *William L. McGrath.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to review a judgment of the Court of Appeals for the District of Columbia Circuit holding that the congressionally mandated composition of petitioner Federal Election Commission (FEC), including as it did representatives of the Senate and House as nonvoting members, violated the separation-of-powers principle embodied in the Constitution. 512 U. S. 1218 (1994). We do not reach the merits of the question, however, because we conclude that the FEC is not authorized to petition for certiorari in this Court on its own, and that the effort of the Solicitor General to authorize the FEC's petition after the time for filing it had expired did not breathe life into it.

The Court of Appeals entered judgment in this case on October 22, 1993. 6 F. 3d 821. The FEC, in its own name, filed a petition for a writ of certiorari on January 18, 1994. The FEC neither sought nor obtained the authorization of the Solicitor General before filing its petition. By order dated March 21, 1994, 510 U. S. 1190, we invited the United States to file a brief addressing the question "[w]hether the [FEC] has statutory authority to represent itself in this case in this Court." The United States filed a brief on May 27, 1994, contending that the FEC lacks such statutory authority. The United States stated, however, that pursuant to 28 U. S. C. § 518(a) and its implementing regulation, the Solicitor General had authorized the FEC's petition by letter dated May 26, 1994. See Brief for United States as *Amicus Curiae* 13. The FEC filed a brief in response on May 31, 1994, asserting that it has independent statutory authority to represent itself before this Court in this case.

A petition for certiorari in a civil case must be filed within 90 days of the entry of the judgment below. 28 U. S. C. § 2101(c). This "90-day limit is mandatory and jurisdictional." *Missouri* v. *Jenkins*, 495 U. S. 33, 45 (1990). Here, the Court of Appeals entered judgment on October 22, 1993,

and the FEC filed its petition for certiorari on January 18, 1994, two days before the 90-day time period expired. The FEC's petition would appear to be timely. However, if the FEC lacks statutory authority to represent itself in this case before this Court, it cannot independently file a petition for certiorari, but must receive the Solicitor General's authorization. See 28 CFR § 0.20(a) (1994). The question then becomes whether the Solicitor General's May 26, 1994, letter authorizing the FEC's petition relates back to the date of the FEC's unauthorized filing so as to make it timely. We first examine the scope of the FEC's independent litigating authority.

The FEC is an independent agency established by Congress to "administer, seek to obtain compliance with, and formulate policy" with respect to the Federal Election Campaign Act of 1971 (FECA) and chapters 95 and 96 of Title 26. 86 Stat. 3, as amended, 2 U. S. C. § 437c(b)(1). The FECA governs various aspects of all federal elections, see 2 U. S. C. § 431 *et seq.*, whereas chapters 95 and 96 specifically govern the administration of funds for Presidential election campaigns and the payment of matching funds for Presidential primary campaigns, see 26 U. S. C. § 9001 *et seq.* (Presidential Election Campaign Fund Act), 26 U. S. C. § 9031 *et seq.* (Presidential Primary Matching Payment Account Act). The FEC has "exclusive jurisdiction with respect to the civil enforcement of such provisions." 2 U. S. C. § 437c(b)(1); see *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 485, 489 (1985).

Two separate statutory provisions provide the FEC with independent litigating authority. The first provision, 2 U. S. C. § 437d(a)(6), applies to actions under both the FECA and chapters 95 and 96 of Title 26. It gives the FEC power "to initiate . . . , defend . . . or appeal any civil action . . . to enforce the provisions of [the FECA] and chapter 95 and chapter 96 of title 26, through its general counsel." The second provision, which is contained in 26 U. S. C. §§ 9010(d) and

9040(d), applies only to actions under chapters 95 and 96 of Title 26. It authorizes the FEC "on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section."

The FEC brought this civil enforcement action seeking to establish a violation of 2 U. S. C. § 441b(a), a provision of the FECA. As noted above, 2 U. S. C. § 437d(a)(6) authorizes the FEC to "initiate" and "appeal" an FECA enforcement action such as the present one. Thus, no dispute exists as to the FEC's authority to litigate this case in the District Court or the Court of Appeals;[1] the question here concerns only the FEC's independent litigating authority before *this* Court when it proceeds under § 437d(a)(6).

Title 28 U. S. C. § 518(a) provides in pertinent part:

> "Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court . . . in which the United States is interested."

By regulation, the Attorney General has delegated authority to the Solicitor General:

> "The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Solicitor General, in consultation with each agency or official concerned:
>
> "(a) Conducting, or assigning and supervising, all Supreme Court cases, including appeals, petitions for

[1] Under 28 U. S. C. §§ 516 and 519, the conduct of litigation on behalf of the United States and its agencies is subject to control of the Attorney General "[e]xcept as otherwise authorized by law." The FEC's "initiation" and "appeal" of this action fall within this "otherwise authorized by law" exception.

> and in opposition to certiorari, briefs and arguments, and . . . settlement thereof." 28 CFR § 0.20 (1994).

Thus, if a case is one "in which the United States is interested," § 518(a), "it must be conducted and argued in this Court by the Solicitor General or his designee." *United States* v. *Providence Journal Co.*, 485 U. S. 693, 700 (1988); cf. *United States* v. *Winston*, 170 U. S. 522, 524–525 (1898); *Confiscation Cases*, 7 Wall. 454, 458 (1869).

It is undisputed that this is a case "in which the United States is interested." 28 U. S. C. § 518(a). We have recognized, however, that Congress may "exempt litigation from the otherwise blanket coverage of [§ 518(a)]." *Providence Journal*, 485 U. S., at 705, n. 9. According to the FEC, one such exemption is found in 2 U. S. C. § 437d(a)(6). Bearing in mind the Solicitor General's traditional role in conducting and controlling all Supreme Court litigation on behalf of the United States and its agencies—a role that is critical to the proper management of Government litigation brought before this Court, see *id.*, at 702, n. 7, 706; *id.*, at 709, 713–714 (STEVENS, J., dissenting)—we "must . . . scrutiniz[e] and subjec[t] [§ 437d(a)(6)] to the ordinary tools of statutory construction to determine whether Congress intended to supersede § 518(a)." *Id.*, at 705, n. 9.

Title 2 U. S. C. § 437d(a)(6) gives the FEC power "to initiate . . . , defend . . . or appeal any civil action . . . to enforce the provisions of [the FECA] and chapter 95 and chapter 96 of title 26." The statute clearly authorizes the FEC to "appeal," but it omits any mention of authority to file a "petition for a writ of certiorari" or otherwise conduct litigation before the Supreme Court. The FEC argues that the term "appeal" is not defined in the FECA, and that in the absence of such a definition in the statute the term is construed "in accordance with its ordinary or natural meaning." *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994). It then refers to the definition of "appeal" found in Black's Law Dictionary 96 (6th ed. 1990), which includes, *inter alia*, the following:

> "There are two stages of appeal in the federal and many state court systems; to wit, appeal from trial court to intermediate appellate court and then to Supreme Court."

This argument might carry considerable weight if it were not for the cognate provision authorizing the FEC to enforce chapters 95 and 96 of Title 26. There, Congress has explicitly provided that "[t]he [FEC] is authorized on behalf of the United States to appeal from, *and to petition the Supreme Court for certiorari to review*," judgments or decrees. 26 U. S. C. §§ 9010(d), 9040(d) (emphasis added). It is difficult, if not impossible, to place these sections alongside one another without concluding that Congress intended to restrict the FEC's independent litigating authority in this Court to actions enforcing the provisions of the Presidential election funds under chapters 95 and 96 of Title 26. Such a differentiation by Congress would be quite understandable, since Presidential influence through the Solicitor General might be thought more likely in cases involving Presidential election fund controversies than in other litigation in which the FEC is involved.[2]

The FEC argues that 26 U. S. C. §§ 9010(d) and 9040(d) shed no light on the issue whether 2 U. S. C. § 437d(a)(6) gives it independent litigating authority before this Court because the provisions are found in different statutes, were drafted by different Congresses in different years, and were

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[2] The dissent says it is incongruous "to assume that Congress wanted the FEC to have independent authority to invoke our mandatory [appellate] jurisdiction when proceeding under § 437h, but not to have the authority to invoke our discretionary jurisdiction when proceeding under other sections of the same statute." *Post,* at 100, n. 1. But Congress could have thought the Solicitor General would better represent the FEC's interests in cases involving our discretionary jurisdiction "because the traditional specialization of that office has led it to be keenly attuned to this Court's practice with respect to the granting or denying of petitions for certiorari." *Infra,* at 96.

originally written to apply to different agencies of the Government. Brief for Petitioner in Response to Solicitor General 21. The FEC is only partially correct. Section 9010(d) was first enacted in 1971, and at that time it applied to the Comptroller General. See Presidential Election Campaign Fund Act, Pub. L. 92–178, 85 Stat. 497, 569–570. The Federal Election Campaign Act Amendments of 1974 established the FEC, see Pub. L. 93–443, 88 Stat. 1263, 1280, and enacted § 437d(a)(6). See *id.*, at 1282–1283. The 1974 statute transferred to the FEC the functions previously performed by the Comptroller General under 26 U. S. C. § 9010, see *id.*, at 1293, but it also added § 9040 to Title 26. See *id.*, at 1302. Thus, § 9040(d) was *originally* enacted in 1974 as part of the same legislation that created § 437d(a)(6). Each of the two sections, with its contrasting language as to litigating authority, was before the Conference Committee whose report was ultimately adopted by both Houses. H. R. Conf. Rep. No. 93–1438, pp. 967, 989 (1974). Section 9040(d) may have been modeled on § 9010(d), but because both §§ 9040(d) and 437d(a)(6) were designed to deal with the FEC's authority to represent itself in civil enforcement actions, we find the contrasting language to be particularly telling. See *United States* v. *American Building Maintenance Industries*, 422 U. S. 271, 277 (1975); cf. *Keene Corp.* v. *United States*, 508 U. S. 200, 208 (1993) ("Where Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion") (internal quotation marks and citation omitted).

We recognize sound policy reasons may exist for providing the FEC with independent litigating authority in this Court for actions enforcing the FECA. Congress' decision to create the FEC as an independent agency and to charge it with the civil enforcement of the FECA was undoubtedly influenced by Congress' belief that the Justice Department, headed by a Presidential appointee, might choose to ignore

infractions committed by members of the President's own political party. See, *e. g.*, Federal Election Reform, 1973: Hearings before the Subcommittee on Priveleges *[sic]* and Elections and the Senate Committee on Rules and Administration, 93d Cong., 1st Sess., 17, 177, 186 (1973); Federal Election Campaign Act of 1973: Hearings before the Subcommittee on Communications of the Senate Committee on Commerce, 93d Cong., 1st Sess., 70–71 (1973). The fact that Congress had these policies in mind when giving the FEC independent *enforcement* powers, however, does not demonstrate that it intended to alter the Solicitor General's statutory prerogative to conduct and argue the Federal Government's litigation in the Supreme Court. See 28 U. S. C. § 518(a).

That statutory authority, too, represents a policy choice by Congress to vest the conduct of litigation before this Court in the Attorney General, an authority which has by rule and tradition been delegated to the Solicitor General. See 28 CFR § 0.20(a) (1994). This Court, of course, is well served by such a practice, because the traditional specialization of that office has led it to be keenly attuned to this Court's practice with respect to the granting or denying of petitions for certiorari. But the practice also serves the Government well; an individual Government agency necessarily has a more parochial view of the interest of the Government in litigation than does the Solicitor General's office, with its broader view of litigation in which the Government is involved throughout the state and federal court systems. Whether review of a decision adverse to the Government in a court of appeals should be sought depends on a number of factors which do not lend themselves to easy categorization. The Government as a whole is apt to fare better if these decisions are concentrated in a single official. See *Providence Journal*, 485 U. S., at 706.

Congress could obviously choose, if it sought to do so, to sacrifice the policy favoring concentration of litigating

authority before this Court in the Solicitor General in favor of allowing the FEC to petition here on its own. See 26 U. S. C. §§ 9010(d), 9040(d). But we do not think that § 437d(a)(6) bespeaks such a choice. Nor are we impressed by the FEC's argument that it has represented itself before this Court on several occasions in the past without any question having been raised regarding its authority to do so under § 437d(a)(6). See, *e. g.*, *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986) (finding 2 U. S. C. § 441b unconstitutional as applied); *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197 (1982) (involving interpretation of 2 U. S. C. § 441b(b)(4)(C)); *Bread Political Action Comm.* v. *Federal Election Comm'n*, 455 U. S. 577 (1982) (involving application of 2 U. S. C. § 437h(a)); *Federal Election Comm'n* v. *Democratic Senatorial Campaign Comm.*, 454 U. S. 27 (1981) (involving application of 2 U. S. C. § 441a(d)(3)); *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182 (1981) (upholding constitutionality of certain campaign expenditure limitations imposed by 2 U. S. C. § 431 *et seq.*). The jurisdiction of this Court was challenged in none of these actions, and therefore the question is an open one before us. See, *e. g.*, *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 63, n. 4 (1989) ("[T]his Court has never considered itself bound [by prior *sub silentio* holdings] when a subsequent case finally brings the jurisdictional issue before us") (citation and internal quotation marks omitted); *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 38 (1952) (same). And we do not think that the provisions discussed above, authorizing the FEC to litigate in the federal courts, are the sort of provisions that can be said to be within the province of the agency to interpret. *Federal Election Comm'n* v. *Democratic Senatorial Campaign Comm.*, *supra,* at 37, relied upon by the FEC, dealt with the FEC's interpretation of a substantive provision of the FECA, not with the provisions authorizing independent litigation.

Because the FEC lacks statutory authority to litigate this case in this Court, it necessarily follows that the FEC cannot independently file a petition for certiorari, but must receive the Solicitor General's authorization. See 28 CFR § 0.20(a) (1994). By letter dated May 26, 1994, the Solicitor General authorized the petition filed by the FEC. The Solicitor General's authorization, however, did not come until more than 120 days after the deadline for filing a petition had passed. See 28 U. S. C. § 2101(c). We must determine whether this "after-the-fact" authorization relates back to the date of the FEC's unauthorized filing so as to make it timely. We conclude that it does not.

The question is at least presumptively governed by principles of agency law, and in particular the doctrine of ratification. "If an act to be effective in creating a right against another or to deprive him of a right must be performed before a specific time, an affirmance is not effective against the other unless made before such time." Restatement (Second) of Agency § 90 (1958); see also *id.*, Comment *a* ("The bringing of an action, or of an appeal, by a purported agent can not be ratified after the cause of action or right to appeal has been terminated by lapse of time"). Though in a different context, we have recognized the rationale behind this rule: "The intervening rights of third persons cannot be defeated by the ratification. In other words, it is essential that the party ratifying should be able not merely to do the act ratified at the time the act was done, *but also at the time the ratification was made.*" *Cook* v. *Tullis*, 18 Wall. 332, 338 (1874) (emphasis added). Here, the Solicitor General attempted to ratify the FEC's filing on May 26, 1994, but he could not himself have filed a petition for certiorari on that date because the 90-day time period for filing a petition had expired on January 20, 1994. His authorization simply came too late in the day to be effective. See, *e. g.*, *Nasewaupee* v. *Sturgeon Bay*, 77 Wis. 2d 110, 116–119, 251 N. W. 2d 845,

848–849 (1977) (refusing to uphold town board's ratification of private attorney's unauthorized commencement of lawsuit where ratification came after the statute of limitations had run); *Wagner* v. *Globe*, 150 Ariz. 82, 87, 722 P. 2d 250, 255 (1986) (holding invalid city council's attempt to ratify police chief's dismissal of police officer after police officer commenced a wrongful discharge action). But see *Trenton* v. *Fowler-Thorne Co.*, 57 N. J. Super. 196, 154 A. 2d 369 (1959) (upholding city's ratification of unauthorized lawsuit filed on its behalf even though ratification occurred after limitations period had expired).

The application of these principles of agency law here produces a result entirely consistent with, and perhaps required by, 28 U. S. C. § 2101(c), the statute governing the time for filing petitions for certiorari. "We have no authority to extend the period for filing except as Congress permits." *Jenkins*, 495 U. S., at 45. If the Solicitor General were allowed to retroactively authorize otherwise unauthorized agency petitions after the deadline had expired, he would have the unilateral power to extend the 90-day statutory period for filing certiorari petitions by days, weeks, or, as in this case, even months. Such a practice would result in the blurring of the jurisdictional deadline. But "[t]he time of appealability, having jurisdictional consequences, should above all be clear." *Budinich* v. *Becton Dickinson & Co.*, 486 U. S. 196, 202 (1988).

We hold that the FEC may not independently file a petition for certiorari in this Court under 2 U. S. C. § 437d(a)(6), and that the Solicitor General's "after-the-fact" authorization does not relate back to the date of the FEC's unauthorized filing so as to make it timely. We therefore dismiss the petition for certiorari for want of jurisdiction.

It is so ordered.

JUSTICE GINSBURG took no part in the consideration or decision of this case.

JUSTICE STEVENS, dissenting.

The Federal Election Commission (FEC) "is an independent administrative agency vested with exclusive jurisdiction over civil enforcement of the [Federal Election Campaign] Act." *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 198, n. 2 (1982). Both the plain language of the governing statute, § 311(a)(6), 88 Stat. 1282, as amended, 2 U. S. C. § 437d(a)(6), and the unfortunate chapter in our history that gave rise to the creation of the FEC, demonstrate that the FEC's exclusive jurisdiction includes the authority to litigate in this Court without the prior approval of the Solicitor General.

Section 437d(a)(6) expressly provides that the FEC has the power "to initiate . . . , defend . . . or appeal any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26, through its general counsel." It is undisputed that when the statute was enacted, the FEC had the authority to invoke our mandatory jurisdiction by filing an appeal under § 437h of the Federal Election Campaign Act of 1971.[1] Although the term "appeal" may be construed literally to encompass only mandatory review, a far more natural reading of the term as it is used in § 437d(a)(6) would embrace all appellate litigation whether prosecuted by writ of certiorari, writ of mandamus, or notice of appeal. Indeed, 28 U. S. C. § 518(a) (1988 ed., Supp. V), the statute that gives the Attorney

[1] Under the original statutory scheme, certain constitutional challenges were to be certified to a court of appeals sitting en banc, with "appeal directly to the Supreme Court." 2 U. S. C. § 437h (1976 ed. and Supp. III). See generally *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182, 188–189 (1981). Thus, even under the majority's interpretation of the word "appeal," the FEC would have had independent litigating authority, at least when proceeding under § 437h. It is incongruous, to say the least, to assume that Congress wanted the FEC to have independent authority to invoke our mandatory jurisdiction when proceeding under § 437h, but not to have the authority to invoke our discretionary jurisdiction when proceeding under other sections of the same statute.

General authority to conduct litigation in this Court, refers simply to "suits and appeals." Because the term "suits" apparently refers to our original jurisdiction, it appears that the term "appeals" is intended to refer to a broad range of appellate litigation, including both mandatory appeals and petitions for certiorari.

The ambiguity in the word "appeal" is apparent even in §§ 9010(d) and 9040(d), the sections on which the majority relies to cabin the authority granted in § 437d(a)(6). In those sections, Congress uses the word "appeal" to describe two different categories of appellate litigation. In the text of those sections, "appeal" is used in contradistinction to "writ of certiorari" to indicate mandatory appeals. But Congress also uses "appeal" as the title to both §§ 9010(d) and 9040(d). See n. 4, *infra.* As thus used, "appeal" describes an entire category of appellate litigation that includes mandatory appeals and writs of certiorari. I see no reason for assuming that "appeal" in § 437d(a)(6) was intended to incorporate the narrow, rather than the broad, understanding of "appeal."

The historical context in which Congress adopted § 437d(a)(6) demonstrates that the interpretation that the Court adopts today is unfaithful to the intent of Congress. Section 437d(a)(6) was passed as part of the Federal Election Campaign Act Amendments of 1974 (FECA). The 1974 amendments represented a response by Congress to perceived abuses arising out of the 1972 Presidential election campaign and culminating in the resignation of President Nixon. Indeed, the legislative history reveals Congress' belief that "[p]robably the most significant reform that could emerge from the Watergate scandal is the creation of an independent nonpartisan agency to supervise the enforcement of the laws relating to the conduct of elections."[2]

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[2] See Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 93–981, 93d Cong., 2d Sess., 564 (1974).

One of the most dramatic events of the entire Watergate scandal was the firing of special prosecutor Archibald Cox in October 1973. When Cox threatened to secure a judicial determination that the President was violating a court order to deliver certain Presidential tapes, President Nixon ordered the Attorney General to fire Cox. Both the Attorney General and the Deputy Attorney General refused, and instead resigned. The President's order to fire Cox was then carried out by the Solicitor General, in his capacity as Acting Attorney General. See generally *In re Olson*, 818 F. 2d 34, 41–42 (CADC 1987) *(per curiam)*. This incident, which came to be known as the "Saturday Night Massacre," sparked tremendous public outrage, of which Congress was surely aware. Against this background, Congress would not have been likely, less than one year later, to have made the FEC dependent for its Supreme Court litigation on the approval of the Solicitor General.

In short, the legislative history of the 1974 amendments shows that Congress intended the FEC to have ample authority to oversee Presidential campaigns free of Executive influence. The FEC's authority to conduct civil litigation, including appellate litigation, must be construed in the light of Congress' intent.

Given the language and historical context of § 437d(a)(6), it is unsurprising that the FEC has had a long and uninterrupted history of independent litigation before this Court.[3] Though, as the majority notes, *ante*, at 97, that history does not preclude us from reexamining the FEC's authority, the contemporaneous practice of independent litigation, uninterrupted in subsequent years, provides confirmation of Con-

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[3] The FEC has represented itself in cases resulting in decisions on the merits, see *ante*, at 97, and as *amicus curiae*, see, *e. g.*, *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978); *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990). Cf. R. Stern, E. Gressman, S. Shapiro, & K. Geller, Supreme Court Practice 68, n. 56 (7th ed. 1993) (noting FEC's authority to litigate on its own behalf pursuant to § 437d(a)(6)).

gress' original intent. See *BankAmerica Corp.* v. *United States*, 462 U. S. 122, 131 (1983). Moreover, during the administrations of Presidents Ford, Carter, Reagan, and Bush, the Attorneys General and Solicitors General of the United States did not object to the FEC's exercise of authority to litigate in this Court without the prior approval of the Solicitor General. As this Court has noted:

> "'[J]ust as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.'" *Ibid.*, quoting *FTC* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 352 (1941).

See also *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, 513 (1949) ("Failure to use such an important power for [over 10 years] indicates to us that the Commission did not believe the power existed").

In rejecting the result dictated by language, history, and longstanding practice, the majority relies primarily on the differences between § 437d(a)(6) and 26 U. S. C. §§ 9010(d), 9040(d).[4] The relevant language in § 9010, which originally conferred additional and unusual responsibilities on the Comptroller General of the United States, was enacted in 1971 as part of the Presidential Election Campaign Fund Act (Fund Act), which authorized public funding of Presidential campaigns.[5] As the majority notes, *ante*, at 95, § 9040(d) was enacted at the same time as § 437d(a)(6), in 1974. The majority suggests that the differences between §§ 9040(d) and

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[4] Sections 9010(d) and 9040(d) are identical. They read:

"(d) Appeal. The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section."

[5] The 1974 amendment transferred those responsibilities to the FEC.

437d(a)(6) reveal Congress' intent to give the FEC a more limited litigation authority under the latter statute.

The differences between §§ 437d(a)(6) and 9040(d) cannot support the weight that the majority wishes them to bear. The striking similarity between §§ 9010 and 9040 suggests that when Congress enacted § 9040, it did little more than copy the provisions of § 9010.[6] No evidence whatsoever suggests that Congress considered the significance of the wording of those sections when it created § 437d(a)(6). The fact that the FEC's authority to file petitions for certiorari is expressed more explicitly in §§ 9010(d) and 9040(d) of Title 26 than in § 437d(a)(6) of Title 2 is thus not a sufficient reason for failing to give the latter provision its ordinary and well-accepted interpretation.[7]

Furthermore, the majority's reading of the statutes rests on the anomalous premise that Congress decided to give the FEC authority to litigate Fund Act cases in this Court while denying it similar authority in connection with its broader regulatory responsibilities under the FECA. The majority

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[6] As noted at n. 4, *supra*, §§ 9010(d) and 9040(d) are identical. The other provisions of those statutes, though not identical, are substantially similar. Compare, *e. g.*, § 9010(b) ("The Commission is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of examination and audit made pursuant to section 9007") with § 9040(b) ("The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038").

[7] As an aside, I note that the majority's strict reading of §§ 9010(d) and 9040(d) creates its own oddities. For example, it seems to me that an open question under the Court's narrow reading of the statutes is whether the FEC has the right to file briefs in opposition to the certiorari petitions filed by its adversaries. Compare § 9010(d) (granting the FEC authority to "petition the Supreme Court for certiorari to review") with 28 CFR § 0.20 (1994) (delegating to the Solicitor General authority to file "petitions for *and in opposition to* certiorari") (emphasis added).

explains this anomaly by hypothesizing that "Presidential influence through the Solicitor General might be thought more likely in cases involving Presidential election fund controversies than in other litigation in which the FEC is involved." *Ante*, at 94. This hypothesis is untenable. Indeed, the Court has previously noted:

> "[B]oth the Fund Act and FECA play a part in regulating Presidential campaigns. The Fund Act comes into play only if a candidate chooses to accept public funding of his general election campaign, and it covers only the period between the nominating convention and 30 days after the general election. In contrast, FECA applies to all Presidential campaigns, as well as other federal elections, regardless of whether publicly or privately funded." *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 491 (1985).

Finally, though admittedly important, the 1971 Act was a relatively undramatic piece of legislation, enacted before Watergate seized the national (and congressional) attention. The notion that Congress was motivated by a concern about improper Presidential influence in 1971 when it enacted the Fund Act, but ignored such concerns in 1974 when it enacted FECA, is simply belied by "a page of history." See *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921) (Holmes, J.).

During two decades of FEC litigation we have repeatedly recognized that the FEC's express statutory authority to initiate, defend, or "appeal any civil action" to enforce FECA "through its general counsel" encompasses discretionary appellate review as well as the now almost extinct mandatory appellate review in this Court. Because I remain persuaded that this settled practice was faithful to both the plain language and the underlying purpose of § 437d(a)(6), I respectfully dissent.

Syllabus

REICH *v.* COLLINS, REVENUE COMMISSIONER OF GEORGIA, ET AL.

CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 93–908. Argued October 11, 1994—Decided December 6, 1994

Georgia taxed retirement benefits paid by the Federal Government, but exempted those paid by the State, until this Court held, in 1989, that such a scheme violates the Federal Constitution. Georgia then repealed its state retiree tax exemption, but did not offer federal retirees refunds for the unconstitutional taxes they had paid before the Court's 1989 decision. Petitioner Reich, a federal retiree, sought redress under a Georgia statute requiring refunds of "illegally assessed" taxes. In affirming the state trial court's denial of such relief, the State Supreme Court held that the refund statute does not apply where the law under which the taxes were assessed and collected was itself subsequently declared to be invalid. It then denied Reich's petition seeking reconsideration under *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, and similar cases, which establish that due process requires a "clear and certain" remedy for taxes collected in violation of federal law, and that a State may provide that remedy before the disputed taxes are paid (predeprivation), after they are paid (postdeprivation), or both. Reich petitioned for certiorari, and this Court remanded for further consideration in light of *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86, which had relied on *McKesson* in circumstances similar to this case. In again denying Reich's refund claim, the State Supreme Court reviewed Georgia's predeprivation remedies and found those remedies to be "ample."

Held: The Georgia Supreme Court erred in relying on Georgia's predeprivation remedies to deny relief. Although due process, under *McKesson*, allows a State to maintain a remedial scheme that is exclusively predeprivation, exclusively postdeprivation, or a hybrid, and to reconfigure its scheme over time to fit changing needs, it may *not* do what Georgia did here: "bait and switch" by reconfiguring, unfairly, in *midcourse*. Specifically, Georgia held out what plainly appeared to be a "clear and certain" postdeprivation remedy, its tax refund statute, and then declared, only after Reich and others had paid the disputed taxes, that no such remedy exists. In this regard, the State Supreme Court's reliance on predeprivation procedures was entirely beside the point (and thus error), because even assuming the constitutional adequacy of those procedures—an issue not here addressed—no reasonable taxpayer

Syllabus

would have thought that they represented, in light of the apparent applicability of the refund statute, the *exclusive* remedy for unlawful taxes. Cf. *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449. The case is remanded for the provision of meaningful backward-looking relief consistent with due process and the *McKesson* line of cases. Pp. 110–114.

263 Ga. 602, 437 S. E. 2d 320, reversed and remanded.

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

Carlton M. Henson argued the cause and filed briefs for petitioner.

Warren R. Calvert, Senior Assistant Attorney General of Georgia, argued the cause for respondents. With him on the briefs were *Michael J. Bowers*, Attorney General, and *Daniel M. Formby*, Senior Assistant Attorney General.*

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*Briefs of *amici curiae* urging reversal were filed for the Committee on State Taxation by *Kendall L. Houghton* and *William D. Peltz;* for James B. Beam Distilling Co. by *Morton Siegel* and *John L. Taylor, Jr.;* for the National Association of Retired Federal Employees et al. by *Michael J. Kator;* and for the Tax Executives Institute, Inc., by *Timothy J. McCormally* and *Mary L. Fahey.*

Briefs of *amici curiae* urging affirmance were filed for the State of Alabama et al. by *James S. Gilmore III*, Attorney General of Virginia, *David E. Anderson*, Chief Deputy Attorney General, *Catherine C. Hammond*, Deputy Attorney General, *Roger L. Chaffe* and *Gregory E. Lucyk*, Senior Assistant Attorneys General, and *Cynthia W. Comer* and *Barbara H. Vann*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *James H. Evans* of Alabama, *Grant Woods* of Arizona, *Robert Butterworth* of Florida, *Robert A. Marks* of Hawaii, *Roland W. Burris* of Illinois, *Pamela Carter* of Indiana, *Bonnie J. Campbell* of Iowa, *Robert T. Stephan* of Kansas, *Richard P. Ieyoub* of Louisiana, *Hubert H. Humphrey III* of Minnesota, *Jeremiah W. (Jay) Nixon* of Missouri, *Joseph P. Mazurek* of Montana, *Jeffrey R. Howard* of New Hampshire, *Deborah T. Poritz* of New Jersey, *Heidi Heitkamp* of North Dakota, *Susan B. Loving* of Oklahoma, *Ernest D. Preate, Jr.*, of Pennsylvania, *Charles W. Burson* of Tennessee, *Dan Morales* of Texas, *Jan Graham* of Utah, *Jeffrey L. Amestoy* of Vermont, *Christine O. Gregoire* of Washington, and *James E. Doyle* of Wisconsin; and for the National Governors' Association et al. by *Richard Ruda* and *Charles Rothfeld.*

Michael F. Easley, Attorney General, *Edwin M. Speas, Jr.*, Senior Deputy Attorney General, *Thomas F. Moffitt* and *Norma S. Harrell*, Special

JUSTICE O'CONNOR delivered the opinion of the Court.

In a long line of cases, this Court has established that due process requires a "clear and certain" remedy for taxes collected in violation of federal law. *Atchison, T. & S. F. R. Co.* v. *O'Connor*, 223 U. S. 280, 285 (1912) (Holmes, J.). A State has the flexibility to provide that remedy before the disputed taxes are paid (predeprivation), after they are paid (postdeprivation), or both. But what it may not do, and what Georgia did here, is hold 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.

I

For many years, numerous States, including Georgia, exempted from state personal income tax retirement benefits paid by the State, but not retirement benefits paid by the Federal Government (or any other employer). In March 1989, this Court held that such a tax scheme violates the constitutional intergovernmental tax immunity doctrine, which dates back to *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), and has been generally codified at 4 U. S. C. § 111. See *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803 (1989).

In the aftermath of *Davis*, most of these States, Georgia included, repealed their special tax exemptions for state retirees, but few offered federal retirees any refunds for the unconstitutional taxes they had paid in the years before *Davis* was decided. Not surprisingly, a great deal of litigation ensued in an effort to force States to provide refunds. The instant suit is part of that litigation.

In April 1990, Reich, a retired federal military officer, sued Georgia in Georgia state court, seeking a refund for the tax years 1980 and after. The principal legal basis for Reich's

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Deputy Attorneys General, and *Marilyn R. Mudge*, Assistant Attorney General, filed a brief for the State of North Carolina as *amicus curiae*.

lawsuit was Georgia's tax refund statute, which provides: "A taxpayer shall be refunded any and all taxes or fees which are determined to have been erroneously or illegally assessed and collected from him under the laws of this state, whether paid voluntarily or involuntarily . . . ." Ga. Code Ann. § 48–2–35(a) (Supp. 1994).

The Georgia trial court first decided that, because of § 48–2–35's statute of limitations, Reich's refund request was limited to the tax years 1985 and after. Even as to these later tax years, however, the trial court refused to grant a refund, and the Georgia Supreme Court affirmed. See *Reich* v. *Collins*, 262 Ga. 625, 422 S. E. 2d 846 (1992) *(Reich I)*. The Georgia high court explained that it was construing the refund statute not to apply to "the situation where the law under which the taxes are assessed and collected is itself subsequently declared to be unconstitutional or otherwise invalid." *Id.*, at 628–629, 422 S. E. 2d, at 849.

Reich then petitioned the Georgia Supreme Court for reconsideration of its decision on the grounds that even if the Georgia tax refund statute does not require a refund, federal due process does—due process, that is, as interpreted by *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18 (1990), and the long line of cases upon which *McKesson* depends. See *id.*, at 32–36, citing *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239 (1931); *Montana Nat. Bank of Billings* v. *Yellowstone County*, 276 U. S. 499 (1928); *Carpenter* v. *Shaw*, 280 U. S. 363 (1930); *Ward* v. *Board of Commr's of Love Cty.*, 253 U. S. 17 (1920); *Atchison, T. & S. F. R. Co.* v. *O'Connor*, *supra;* see generally Fallon & Meltzer, New Law, Non-Retroactivity, and Constitutional Remedies, 104 Harv. L. Rev. 1733, 1824–1830 (1991). As we said, these cases stand for the proposition that "a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment," *Carpenter*, *supra*, at 369,

the sovereign immunity States traditionally enjoy in their own courts notwithstanding. (We should note that the sovereign immunity States enjoy in *federal* court, under the Eleventh Amendment, does generally bar tax refund claims from being brought in that forum. See *Ford Motor Co.* v. *Department of Treasury of Ind.*, 323 U. S. 459 (1945).)

Reich's petition for reconsideration in light of *McKesson* was denied. He then petitioned for certiorari. While the petition was pending, we decided *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86 (1993), which relied on *McKesson* in circumstances similar to this case. Accordingly, we remanded Reich's case to the Georgia Supreme Court for further consideration in light of *Harper*. See *Reich* v. *Collins*, 509 U. S. 918 (1993).

On remand, the Georgia Supreme Court focused on the portion of *Harper* explaining that, under *McKesson*, a State is free to provide its "clear and certain" remedy in an exclusively predeprivation manner. "[A] meaningful opportunity for taxpayers to withhold contested tax assessments and to challenge their validity in a predeprivation hearing," we said, is "'a procedural safeguard [against unlawful deprivations] sufficient by itself to satisfy the Due Process Clause.'" See *Harper*, *supra*, at 101, quoting *McKesson*, *supra*, at 38, n. 21. The court then reviewed Georgia's predeprivation procedures, found them "ample," and denied Reich's refund claim. *Reich* v. *Collins*, 263 Ga. 602, 604, 437 S. E. 2d 320, 322 (1993).

Reich again petitioned for certiorari, and we granted the writ, 510 U. S. 1109 (1994), to consider whether it was proper for the Georgia Supreme Court to deny Reich relief on the basis of Georgia's predeprivation remedies.

II

The Georgia Supreme Court is no doubt right that, under *McKesson*, Georgia has the flexibility to maintain an exclusively predeprivation remedial scheme, so long as that

scheme is "clear and certain." Due process, we should add, also allows the State to maintain an exclusively postdeprivation regime, see, *e. g.*, *Bob Jones Univ.* v. *Simon*, 416 U. S. 725, 746–748 (1974), or a hybrid regime. A State is free as well to reconfigure its remedial scheme over time, to fit its changing needs. Such choices are generally a matter only of state law.

But what a State may *not* do, and what Georgia did here, is to reconfigure its scheme, unfairly, in *mid-course*—to "bait and switch," as some have described it. Specifically, in the mid-1980's, Georgia held out what plainly appeared to be a "clear and certain" postdeprivation remedy, in the form of its tax refund statute, and then declared, only after Reich and others had paid the disputed taxes, that no such remedy exists. In this regard, the Georgia Supreme Court's reliance on Georgia's predeprivation procedures was entirely beside the point (and thus error), because even assuming the constitutional adequacy of these procedures—an issue on which we express no view—no reasonable taxpayer would have thought that they represented, in light of the apparent applicability of the refund statute, the *exclusive* remedy for unlawful taxes. See generally Rakowski, *Harper* and Its Aftermath, 1 Fla. Tax Rev. 445, 474 (1993).

Nor can there be any question that, during the 1980's, prior to *Reich I*, Georgia did appear to hold out a "clear and certain" postdeprivation remedy. To recall, the Georgia refund statute says that the State "*shall*" refund "*any and all* taxes or fees which are determined to have been erroneously or *illegally assessed* and collected from [a taxpayer] under the laws of this state, whether paid voluntarily or involuntarily . . . ." Ga. Code Ann. § 48–2–35(a) (Supp. 1994) (emphasis added). In our view, the average taxpayer reading this language would think it obvious that state taxes assessed in violation of federal law are "illegally assessed" taxes. Certainly the United States Court of Appeals for the Eleventh Circuit thought this conclusion was obvious when,

in a 1986 case, it denied federal court relief to taxpayers raising claims similar to Reich's, in part because it thought Georgia's refund statute applied to the claims. See *Waldron* v. *Collins*, 788 F. 2d 736, 738, cert. denied, 479 U. S. 884 (1986).

Respondents, moreover, do not point to any Georgia Supreme Court cases prior to *Reich I* that put any limiting construction on the statute's sweeping language; indeed, the cases we have found are all entirely consistent with that language's apparent breadth. See, *e. g.*, *Georgia* v. *Private Truck Council of America, Inc.*, 258 Ga. 531, 371 S. E. 2d 378 (1988); *Henderson* v. *Carter*, 229 Ga. 876, 195 S. E. 2d 4 (1972); *Parke, Davis & Co.* v. *Cook*, 198 Ga. 457, 31 S. E. 2d 728 (1944); *Wright* v. *Forrester*, 192 Ga. 864, 16 S. E. 2d 873 (1941). Even apart from the statute and the cases, we find it significant that, for obvious reasons, States ordinarily *prefer* that taxpayers pursue only postdeprivation remedies, *i. e.*, that taxpayers "pay first, litigate later." This preference is significant in that it would seem especially unfair to penalize taxpayers who may have ignored the possibility of pursuing predeprivation remedies out of respect for that preference.

In many ways, then, this case bears a remarkable resemblance to *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958) (Harlan, J.). There, an Alabama trial court held the National Association for the Advancement of Colored People in contempt for failing to comply with a discovery order to produce its membership lists, and the Alabama Supreme Court denied review of the constitutionality of the contempt judgment on the grounds that the organization failed earlier to pursue a mandamus action to quash the underlying discovery order. The Court found that the Alabama high court's refusal to review the contempt judgment was in error. Prior Alabama law, the Court said, showed "unambiguous[ly]" that judicial review of contempt judgments had consistently been available, the existence of man-

damus notwithstanding. *Id.*, at 456. For good measure, the Court also looked at prior Alabama law on mandamus and found nothing "suggest[ing] that mandamus is the *exclusive* remedy" in this situation. *Id.*, at 457 (emphasis in original). Justice Harlan thus concluded: "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." *Id.*, at 457–458, citing *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673 (1930) (due process violated when state court denied injunction against collection of unlawful taxes on the basis of taxpayer's failure to pursue administrative remedies, where State's prior "settled" law made clear that no such administrative remedies existed); see generally Meltzer, State Court Forfeitures of Federal Rights, 99 Harv. L. Rev. 1128, 1137–1139 (1986).

Finally, Georgia contends that Reich had no idea (before *Davis*) that the taxes he was paying throughout the 1980's might be unconstitutional. Even assuming Reich had no idea, however, we are not sure we understand the argument. If the argument is that Reich would not have taken advantage of the State's predeprivation remedies no matter how adequate they were (and thus has no standing to complain of those remedies), the argument is beside the point for the same reason that we said that the Georgia Supreme Court's reliance on those remedies was beside the point: Reich was entitled to pursue what appeared to be a "clear and certain" postdeprivation remedy, regardless of the State's predeprivation remedies. Alternatively, if the argument is that Reich needed to have known of the unconstitutionality of his taxes in order to pursue the State's postdeprivation remedy, the argument is wrong. It is wrong because Georgia's refund statute has a relatively lengthy statute of limitations period, and, at least until this case, see *Reich I*, 262 Ga., at 629, 422 S. E. 2d, at 849, contained no contemporaneous pro-

test requirement. Under such a regime, taxpayers need not have taken any steps to learn of the possible unconstitutionality of their taxes at the time they paid them. Accordingly, they may not now be put in any worse position for having failed to take such steps.

For the reasons stated, the judgment is reversed and the case is remanded for the provision of "'meaningful backward-looking relief,'" *Harper*, 509 U. S., at 101, quoting *McKesson*, 496 U. S., at 31, consistent with due process and our *McKesson* line of cases. See, *e. g.*, *Carpenter* v. *Shaw*, 280 U. S. 363 (1930).

It is so ordered.

Syllabus

BROWN, SECRETARY OF VETERANS AFFAIRS *v.* GARDNER

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

No. 93–1128. Argued October 31, 1994—Decided December 12, 1994

After respondent veteran had back surgery in a Department of Veterans Affairs facility for a condition unrelated to his military service, he developed pain and weakness in his left leg, which he alleged was the result of the surgery. He claimed disability benefits under 38 U. S. C. § 1151, which requires the VA to compensate for "an injury, or an aggravation of an injury," that occurs "as the result of" VA treatment. The VA and the Board of Veterans' Appeals denied the claim on the ground that § 1151, as interpreted by 38 CFR § 3.358(c)(3), only covers an injury if it resulted from negligent treatment by the VA or an accident occurring during treatment. The Court of Veterans Appeals reversed, holding that § 1151 neither imposes nor authorizes adoption of § 3.358(c)(3)'s fault-or-accident requirement. The Court of Appeals for the Federal Circuit affirmed.

Held: Section 3.358(c)(3) is not consistent with the plain language of § 1151, which contains not a word about fault-or-accident. The statutory text and reasonable inferences from it give a clear answer against the Government's arguments that a fault requirement is implicit in the terms "injury" and "as a result of." This clear textually grounded conclusion is also fatal to the Government's remaining principal arguments: that Congress ratified the VA's practice of requiring a showing of fault when it reenacted the predecessor of § 1151 in 1934, or, alternatively, that the post-1934 legislative silence serves as an implicit endorsement of the fault-based policy; and that the policy deserves judicial deference due to its undisturbed endurance. Pp. 117–122.

5 F. 3d 1456, affirmed.

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

Edward C. DuMont argued the cause for petitioner. With him on the briefs were *Solicitor General Days*, *Deputy Solicitor General Bender*, and *Tresa M. Schlecht.*

Joseph M. Hannon, Jr., argued the cause for respondent. With him on the briefs was *William S. Mailander.**

JUSTICE SOUTER delivered the opinion of the Court.

In this case we decide whether a regulation of the Department of Veterans Affairs, 38 CFR § 3.358(c)(3) (1993), requiring a claimant for certain veterans' benefits to prove that disability resulted from negligent treatment by the VA or an accident occurring during treatment, is consistent with the controlling statute, 38 U. S. C. § 1151 (1988 ed., Supp. V). We hold that it is not.

I

Fred P. Gardner, a veteran of the Korean conflict, received surgical treatment in a VA facility for a herniated disc unrelated to his prior military service. Gardner then had pain and weakness in his left calf, ankle, and foot, which he alleged was the result of the surgery. He claimed disability benefits under § 1151,[1] which provides that the VA will compensate for "an injury, or an aggravation of an injury," that occurs "as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation" provided under any of the laws administered by the VA, so long as the injury was "not the result of such veteran's own willful misconduct . . . ." The VA and the Board

*Briefs of *amici curiae* urging affirmance were filed for the State of Texas by *Dan Morales*, Attorney General, and *Jorge Vega*, First Assistant Attorney General; for the National Veterans Legal Services Project by *Ronald S. Flagg* and *Gershon M. Ratner;* and for the Paralyzed Veterans of America et al. by *Robert L. Nelson*, *Lawrence B. Hagel*, and *Irving R. M. Panzer*.

[1] Section 1151 is invoked typically to provide benefits to veterans for nonservice related disabilities, although it is not so limited by its terms. See Pet. for Cert. 6, n. 3. The statute's history begins in 1924 when Congress enacted § 213 of the World War Veterans' Act, 1924, ch. 320, 43 Stat. 623. Section 213 was repealed in 1933, as part of the Economy Act of 1933, ch. 3, Tit. I, § 17, 48 Stat. 11–12, and reenacted in nearly the same form in 1934, Act of Mar. 28, 1934, ch. 102, Tit. III, § 31, 48 Stat. 526.

of Veterans' Appeals denied Gardner's claim for benefits, on the ground that § 1151, as interpreted by 38 CFR § 3.358(c)(3) (1993), only covers an injury if it "proximately resulted [from] carelessness, negligence, lack of proper skill, error in judgment, or similar instances of indicated fault" on the part of the VA, or from the occurrence during treatment or rehabilitation of an "accident," defined as an "unforeseen, untoward" event. The Court of Veterans Appeals reversed, holding that § 1151 neither imposes nor authorizes adoption of the fault-or-accident requirement set out in § 3.358(c)(3), *Gardner* v. *Derwinski*, 1 Vet. App. 584 (1991), and the Court of Appeals for the Federal Circuit affirmed, 5 F. 3d 1456 (1993). We granted certiorari, 511 U. S. 1017, and now affirm.

II

Despite the absence from the statutory language of so much as a word about fault[2] on the part of the VA, the Government proposes two interpretations in attempting to reveal a fault requirement implicit in the text of § 1151, the first being that fault inheres in the concept of compensable "injury." We think that no such inference can be drawn in this instance, however. Even though "injury" can of course carry a fault connotation, see Webster's New International Dictionary 1280 (2d ed. 1957) (an "actionable wrong"), it just as certainly need not do so, see *ibid.* ("[d]amage or hurt done to or suffered by a person or thing"). The most, then, that the Government could claim on the basis of this term is the existence of an ambiguity to be resolved in favor of a fault requirement (assuming that such a resolution would be possi-

[2] "Fault" is shorthand for fault-or-accident, the test imposed by the regulation. Section 3.358(c)(3) leaves the additional burden imposed by the "accident" requirement unclear, defining the term to mean simply an "unforeseen, untoward" event. Although the appropriate scope of the "accident" requirement is not before us, on one plausible reading of the regulation some burden additional to the statutory obligation would be imposed as an alternative to fault.

ble after applying the rule that interpretive doubt is to be resolved in the veteran's favor, see *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 220–221, n. 9 (1991)). But the Government cannot plausibly make even this claim here. Ambiguity is a creature not of definitional possibilities but of statutory context, see *id.*, at 221 ("[T]he meaning of statutory language, plain or not, depends on context"), and this context negates a fault reading. Section 1151 provides compensability not only for an "injury," but for an "aggravation of an injury" as well. "Injury" as used in this latter phrase refers to a condition prior to the treatment in question, and hence cannot carry with it any suggestion of fault attributable to the VA in causing it. Since there is a presumption that a given term is used to mean the same thing throughout a statute, *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932), a presumption surely at its most vigorous when a term is repeated within a given sentence, it is virtually impossible to read "injury" as laden with fault in the sentence quoted.

Textual cross-reference confirms this conclusion. "Injury" is employed elsewhere in the veterans' benefits statutes as an instance of the neutral term "disability," appearing within a series whose other terms exemplify debility free from any fault connotation. See 38 U. S. C. § 1701(1) (1988 ed., Supp. V) ("The term 'disability' means a disease, injury, or other physical or mental defect"). The serial treatment thus indicates that the same fault-free sense should be attributed to the term "injury" itself. *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961) ("[A] word is known by the company it keeps"). Moreover, in analogous statutes dealing with service-connected injuries the term "injury" is again used without any suggestion of fault, as the administrative regulation applicable to these statutes confirms by its failure to impose any fault requirement. Compare 38 U. S. C. § 1110 (1988 ed., Supp. V) ("disability resulting from personal injury suffered or disease contracted in line of duty,

or for aggravation of a preexisting injury suffered or disease contracted in line of duty, . . . during a period of war," is compensable) and 38 U. S. C. § 1131 (1988 ed., Supp. V) ("disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, . . . during other than a period of war," is compensable) with 38 CFR § 3.310(a) (1993) ("Disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition").

In a second attempt to impose a VA-fault requirement, the Government suggests that the "as a result of" language of § 1151 signifies a proximate cause requirement that incorporates a fault test. Once again, we find the suggestion implausible. This language is naturally read simply to impose the requirement of a causal connection between the "injury" or "aggravation of an injury" and "hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation." Assuming that the connection is limited to proximate causation so as to narrow the class of compensable cases, that narrowing occurs by eliminating remote consequences, not by requiring a demonstration of fault.[3] See generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 42 (5th ed. 1984). The eccentricity of reading a fault requirement into the "result

[3] We do not, of course, intend to cast any doubt on the regulations insofar as they exclude coverage for incidents of a disease's or injury's natural progression, occurring after the date of treatment. See 38 CFR § 3.358(b)(2) (1993). VA action is not the cause of the disability in these situations. Nor do we intend to exclude application of the doctrine *volenti non fit injuria*. See generally M. Bigelow, Law of Torts 39–43 (8th ed. 1907). It would be unreasonable, for example, to believe that Congress intended to compensate veterans for the necessary consequences of treatment to which they consented (*i. e.*, compensating a veteran who consents to the amputation of a gangrenous limb for the loss of the limb).

of" language is underscored by the incongruity of applying it to the fourth category for which compensation is available under § 1151, cases of injury resulting from a veteran's "pursuit of vocational rehabilitation." If Congress had meant to require a showing of VA fault, it would have been odd to refer to "the pursuit [by the veteran] of vocational rehabilitation" rather than to "the provision [by the VA] of vocational rehabilitation."

The poor fit of this language with any implicit requirement of VA fault is made all the more obvious by the statute's express treatment of a claimant's fault. The same sentence of § 1151 that contains the terms "injury" and "as a result of" restricts compensation to those whose additional disability was not the result of their "own willful misconduct." This reference to claimant's fault in a statute keeping silent about any fault on the VA's part invokes the rule that "[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 intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U. S. 16, 23 (1983) (internal quotation marks omitted). Without some mention of the VA's fault, it would be unreasonable to read the text of § 1151 as imposing a burden of demonstrating it upon seeking compensation for a further disability.

In sum, the text and reasonable inferences from it give a clear answer against the Government, and that, as we have said, is "'the end of the matter.'" *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402, 409 (1993) (quoting *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984)). Thus this clear textually grounded conclusion in Gardner's favor is fatal to the remaining principal arguments advanced against it.

The Government contends that Congress ratified the VA's practice of requiring a showing of fault when it reenacted the predecessor of § 1151 in 1934, or, alternatively, that Con-

gress's legislative silence as to the VA's regulatory practice over the last 60 years serves as an implicit endorsement of its fault-based policy. There is an obvious trump to the reenactment argument, however, in the rule that "[w]here the law is plain, subsequent reenactment does not constitute an adoption of a previous administrative construction." *Demarest* v. *Manspeaker*, 498 U. S. 184, 190 (1991). See also *Massachusetts Trustees of Eastern Gas & Fuel Associates* v. *United States*, 377 U. S. 235, 241–242 (1964) (congressional reenactment has no interpretive effect where regulations clearly contradict requirements of statute). But even without this sensible rule, the reenactment would not carry the day. Setting aside the disputed question whether the VA used a fault rule in 1934,[4] the record of congressional discussion preceding reenactment makes no reference to the VA regulation, and there is no other evidence to suggest that Congress was even aware of the VA's interpretive position. "In such circumstances we consider the . . . re-enactment to be without significance." *United States* v. *Calamaro*, 354 U. S. 351, 359 (1957).

Congress's post-1934 legislative silence on the VA's fault approach to § 1151 is likewise unavailing to the Government. As we have recently made clear, congressional silence "'lacks persuasive significance,'" *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 187 (1994) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990)), particularly where administrative regulations are inconsistent with the controlling statute, see *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 175, n. 1 (1989) ("Congressional inaction cannot amend a duly enacted statute"). See also *Zuber* v. *Allen*, 396 U. S. 168, 185–186, n. 21 (1969) ("The verdict of quiescent years cannot be invoked to baptize a statutory gloss that is

[4] At the time of the 1934 reenactment, the regulation in effect precluded compensation for the "'usual after[-]results of approved medical care and treatment properly administered.'" See Brief for Respondent 31.

otherwise impermissible. . . . Congressional inaction frequently betokens unawareness, preoccupation, or paralysis").

Finally, we dispose of the Government's argument that the VA's regulatory interpretation of § 1151 deserves judicial deference due to its undisturbed endurance for 60 years. A regulation's age is no antidote to clear inconsistency with a statute, and the fact, again, that § 3.358(c)(3) flies against the plain language of the statutory text exempts courts from any obligation to defer to it. *Dole* v. *Steelworkers*, 494 U. S. 26, 42–43 (1990); *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, *supra*, at 842–843. But even if this were a close case, where consistent application and age can enhance the force of administrative interpretation, see *Zenith Radio Corp.* v. *United States*, 437 U. S. 443, 450 (1978), the Government's position would suffer from the further factual embarrassment that Congress established no judicial review for VA decisions until 1988, only then removing the VA from what one congressional Report spoke of as the agency's "splendid isolation." H. R. Rep. No. 100–963, pt. 1, p. 10 (1988). As the Court of Appeals for the Federal Circuit aptly stated: "Many VA regulations have aged nicely simply because Congress took so long to provide for judicial review. The length of such regulations' unscrutinized and unscrutinizable existence" could not alone, therefore, enhance any claim to deference. 5 F. 3d, at 1463–1464.

III

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

Syllabus

NEBRASKA DEPARTMENT OF REVENUE *v.* LOEWENSTEIN

CERTIORARI TO THE SUPREME COURT OF NEBRASKA

No. 93–823. Argued October 11, 1994—Decided December 12, 1994

Respondent, a Nebraska resident, owns shares in mutual funds (Trusts) that earn some of their income by participating in "repurchase agreements" (repos) involving federal debt securities. In such a transaction, the party holding the securities (Seller-Borrower) transfers them to the Trusts in return for a specified amount of cash. At a later date, the Trusts deliver the securities back to the Seller-Borrower, who credits to the Trusts an amount equal to the cash transfer plus interest at an agreed-upon rate that bears no relation to the yield on the underlying securities. Ultimately, the Trusts' interest income is distributed to respondent in proportion to his shares in the Trusts. After petitioner issued a Revenue Ruling concluding that interest income from repos is subject to Nebraska's income tax, respondent brought this declaratory judgment action in state court, asking that the Revenue Ruling be declared invalid as contrary to the Supremacy Clause and to 31 U. S. C. § 3124(a), which, in relevant part, exempts from state taxation interest on "obligations of the United States Government." The court granted the relief, and the Nebraska Supreme Court affirmed.

Held:

1. Nebraska's taxation of the income respondent derived from the repos does not violate § 3124(a). Pp. 128–135.

(a) For purposes of § 3124(a), the interest income earned by the Trusts is interest on loans from the Trusts to the Seller-Borrower, not interest on federal securities; in this context, the securities are merely collateral for these loans. Several features of the repos lead to this conclusion: (1) at a repo's commencement, the Trusts pay the Seller-Borrower a fixed sum of money, which is repaid with interest at a rate bearing no relation to either the coupon interest paid or discount interest accrued on the federal securities during the term of the repo; (2) the Trusts may liquidate the securities should the Seller-Borrower default on the debt, but, like a lender, they must pay to the Seller-Borrower any proceeds in excess of the amount of the debt plus expenses, and may recover any deficiency from the Seller-Borrower; (3) the market value of the securities must be maintained at 102% of the original payment amount, with the Seller-Borrower delivering cash or additional securities if the value falls below 102%, and the Trusts returning securi-

ties if the value exceeds 102%; and (4) the Seller-Borrower may, during the term of the repo, substitute federal securities of equal market value for the securities initially involved in the transaction. The fact that the Trusts take "delivery" of the federal securities at the repo's commencement also is consistent with understanding the repos as loans, since "delivery" perfects the Trusts' security interests in their collateral. Pp. 128–133.

(b) Respondent's two objections to this interpretation of § 3124(a) are unpersuasive. It does not matter that the Trusts and Seller-Borrower characterize the repos as sales and repurchases, since the substance and economic realities of the transactions show that the Trusts receive interest on cash they have lent to the Seller-Borrower. Cf. *Frank Lyon Co.* v. *United States*, 435 U. S. 561, 582. And, contrary to respondent's argument, this case does not involve the construction or validity of the Nebraska income tax statute's add-back rule. Pp. 133–135.

2. Nebraska's taxation of income from repos involving federal securities does not violate the Supremacy Clause. Respondent has pointed to no statute, revenue ruling, or other manifestation of Nebraska policy that treats "state" repos differently from "federal" repos for tax purposes. Nor does the taxation at issue make it more difficult and expensive for the Federal Government to finance the national debt. Expert testimony referred to by respondent has no relevance to this case, and respondent has shown no "obvious and appreciable" injury to the Government's borrowing power as a result of Nebraska's taxation of the Trusts' repo income, see *Rockford Life Ins. Co.* v. *Illinois Dept. of Revenue*, 482 U. S. 182, 190, n. 10. Pp. 135–137.

244 Neb. 82, 504 N. W. 2d 800, reversed and remanded.

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

L. Jay Bartel, Assistant Attorney General of Nebraska, argued the cause for petitioner. With him on the briefs was *Don Stenberg*, Attorney General.

Terry R. Wittler argued the cause for respondent. With him on the brief was *Larry A. Holle*.*

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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, *Timothy G. Laddish*, Assistant Attorney General, *Joyce E. Hee*, Deputy Attorney General, and *Patrick J. Kusiak*, and by the Attorneys General for their respective jurisdictions as follows: *James H. Evans* of Alabama, *Grant Woods* of Arizona, *Charles M. Oberly III* of Delaware, *Roland W. Burris*

JUSTICE THOMAS delivered the opinion of the Court.

We took this case to decide whether States may tax interest income derived from repurchase agreements involving federal securities. If the income that taxpayers earn by participating in such agreements constitutes interest on federal securities, then the taxation violates 31 U. S. C. § 3124(a), which exempts interest on "obligations of the United States Government" from taxation by States. On the other hand, if that income constitutes interest on loans to a private party, the taxation is not prohibited by the statute. With respect to the repurchase agreements at issue in this case, we conclude that for purposes of § 3124(a), the interest earned by taxpayers is interest on loans to a private party, not interest on federal securities. Accordingly, we hold that § 3124(a) does not prohibit States from taxing such income.

I

Respondent is a Nebraska resident who owns shares in two mutual funds, the Trust for Short-Term U. S. Government Securities and the Trust for U. S. Treasury Obligations (Trusts). The Trusts earn a portion of their income by participating in "repurchase agreements" that involve debt securities issued by the United States Government and its agen-

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of Illinois, *Pamela Carter* of Indiana, *Chris Gorman* of Kentucky, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.,* of Maryland, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Jeffrey R. Howard* of New Hampshire, *Deborah T. Poritz* of New Jersey, *Tom Udall* of New Mexico, *G. Oliver Koppell* of New York, *Heidi Heitkamp* of North Dakota, *Susan Brimer Loving* of Oklahoma, *Theodore R. Kulongoski* of Oregon, *Jan Graham* of Utah, *Jeffrey L. Amestoy* of Vermont, *James S. Gilmore III* of Virginia, and *James E. Doyle* of Wisconsin; and for the Council of State Governments et al. by *Richard Ruda* and *Lee Fennell.*

Briefs of *amici curiae* urging affirmance were filed for The Dreyfus Corporation by *Jeffrey S. Sion;* and for the Investment Company Institute by *Albert G. Lauber, Jr., Paul Schott Stevens,* and *Catherine Heron.*

Thomas C. Baxter, Jr., filed a brief for the Federal Reserve Bank of New York as *amicus curiae.*

cies (federal securities). A typical repurchase agreement used by the Trusts, see App. 65–81, establishes a two-part transaction, commonly called a "repo," between a party who holds federal securities and seeks cash (Seller-Borrower) and a party who has available cash and seeks to earn interest on its idle funds (in this case, the Trusts). In part one of the repo, the Seller-Borrower "transfers" specified federal securities to the Trusts on the records of the Federal Reserve System's commercial book-entry system. Simultaneously, the Trusts transfer a specified amount of cash to the Seller-Borrower's bank account.

In part two of the transaction—which occurs at a later date fixed by agreement or, in the absence of any agreement, upon demand of either party—the Trusts "deliver" the federal securities back to the Seller-Borrower on the Federal Reserve's records, and the Seller-Borrower credits the Trusts' bank account in an amount equal to the sum of the original cash transfer plus "interest" at an agreed-upon rate. This interest rate bears no relation to the yield on the underlying federal securities—either when they were issued by the United States Government or when they later came into the hands of the Seller-Borrower—but is based instead on the current market rate paid on investments with maturities equal to the term of the repo, not to the original or current maturities of the underlying securities.[1]

After deducting administrative costs, the Trusts distribute this interest income to respondent in proportion to his ownership of shares in the Trusts. The State of Nebraska generally taxes interest income, but it does not tax "interest or dividends received by the owner of obligations of the United

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[1] A repurchase agreement is so called because the parties to the agreement identify part one of the transaction as a "sale" of federal securities from the Seller-Borrower to the Trusts and part two a "repurchase" of the securities by the Seller-Borrower from the Trusts. Because the accuracy of these labels is part of the dispute in this case, we use more neutral terms to describe the transaction.

States . . . but exempt from state income taxes under the laws of the United States." Neb. Rev. Stat. § 77–2716(1)(a) (Supp. 1994). For purposes of Nebraska's income tax law, if interest would be exempt from tax in the hands of the Trusts, then respondent's proportionate share of such interest will be exempt. § 77–2716(1)(b).

A decade ago petitioner considered whether the interest income derived from repurchase agreements involving federal securities and then distributed to respondent and similarly situated individuals was subject to Nebraska's income tax. Petitioner concluded that it was. Neb. Rev. Rul. 22–85–1, Brief for Petitioner 4–5, n. 1. In 1988, respondent brought a declaratory judgment action in the District Court of Lancaster County, Nebraska, asking that Revenue Ruling 22–85–1 be declared invalid as contrary to 31 U. S. C. § 3124(a) and the Supremacy Clause of the United States Constitution. The District Court granted the requested relief. On appeal, the Supreme Court of Nebraska affirmed, concluding that "the income received by [respondent] from repo transactions executed by the [T]rusts involving federal securities is exempt from state taxation under § 3124." *Loewenstein* v. *State*, 244 Neb. 82, 90, 504 N. W. 2d 800, 805 (1993).

As the Nebraska Supreme Court itself acknowledged, see *id.*, at 88–90, 504 N. W. 2d, at 804–805, several state courts have reached directly contrary conclusions,[2] and two Federal

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[2] See *Hammond Lead Products, Inc.* v. *State Tax Commissioners*, 575 N. E. 2d 998 (Ind. 1991); *Department of Revenue* v. *Page*, 541 So. 2d 1270 (Fla. App. 1989); *Capital Preservation Fund, Inc.* v. *Wisconsin Dept. of Revenue*, 145 Wis. 2d 841, 429 N. W. 2d 551 (App. 1988); *Andras* v. *Illinois Dept. of Revenue*, 154 Ill. App. 3d 37, 506 N. E. 2d 439 (1987), cert. denied, 485 U. S. 960 (1988).

As Justice Caporale pointed out in dissent below, see 244 Neb., at 91–92, 504 N. W. 2d, at 806, at least five other state courts also have reached a result contrary to that of the majority. See *Everett* v. *State Dept. of Revenue and Finance*, 470 N. W. 2d 13 (Iowa 1991); *Comptroller of the Treasury, Income Tax Div.* v. *First United Bank & Trust*, 320 Md. 352, 578

Courts of Appeals have ruled that interest income derived from repos involving municipal bonds is not exempt from federal taxation under § 103(a)(1) of the Internal Revenue Code.[3] We granted certiorari to resolve this conflict, 510 U. S. 1176 (1994), and we now reverse.

II

We begin with the text of 31 U. S. C. § 3124(a). It provides in relevant part:

> "[O]bligations of the United States Government are exempt from taxation by a State or political subdivision of a State. The exemption applies to each form of taxation that would require the obligation, the interest on the obligation, or both, to be considered in computing a tax . . . ."

Under this provision, a state tax may consider neither the federal "obligation" itself nor the "interest on the obligation." The obligation itself is "considered" when its value is "taken into account, or included in the accounting," *Ameri-*

A. 2d 192 (1990); *Borg* v. *Department of Revenue of Oregon*, 308 Ore. 34, 774 P. 2d 1099 (1989); *Massman Constr. Co.* v. *Director of Revenue of Missouri*, 765 S. W. 2d 592 (Mo. 1989); *In re Sawyer Estate*, 149 Vt. 541, 546 A. 2d 784 (1987). Accord, *H. J. Heinz Co.* v. *Department of Treasury*, 197 Mich. App. 210, 494 N. W. 2d 850 (1992) (distinguishing *Matz* v. *Department of Treasury*, 155 Mich. App. 778, 401 N. W. 2d 62 (1986) *(per curiam)*).

[3] See *Union Planters Nat. Bank of Memphis* v. *United States*, 426 F. 2d 115 (CA6), cert. denied, 400 U. S. 827 (1970); *American Nat. Bank of Austin* v. *United States*, 421 F. 2d 442 (CA5), cert. denied, 400 U. S. 819 (1970). Accord, *First American Nat. Bank of Nashville* v. *United States*, 467 F. 2d 1098 (CA6 1972) *(per curiam)*. Cf. *Citizens Nat. Bank of Waco* v. *United States*, 213 Ct. Cl. 236, 248–251, 551 F. 2d 832, 839–840 (1977) (agreeing that these decisions were correct, but distinguishing them on the facts of the case).

The Internal Revenue Service also has concluded that a taxpayer in the position of the Trusts who derives interest income by participating in repurchase agreements does not earn interest on the securities involved in those agreements. See Rev. Rul. 74–27, 1974–1 Cum. Bull. 24; Rev. Rul. 77–59, 1977–1 Cum. Bull. 196; Rev. Rul. 79–108, 1979–1 Cum. Bull. 75.

can Bank & Trust Co. v. *Dallas County,* 463 U. S. 855, 862 (1983), in computing the taxable value of a taxpayer's assets or net worth for the purpose of a property tax or the like. See, *e. g.*, *First Nat. Bank of Atlanta* v. *Bartow County Bd. of Tax Assessors,* 470 U. S. 583, 585–586 (1985) (property tax on bank shares). By contrast, the interest on the obligation is "considered" when that interest is included in computing the taxpayer's net income or earnings for the purpose of an income tax or the like. See, *e. g.*, *Memphis Bank & Trust Co.* v. *Garner,* 459 U. S. 392, 393–394 (1983) (tax on net earnings of banks).

By participating in repos involving federal securities, the Trusts (and thus respondent) earned interest income, and Nebraska's income tax admittedly considered that interest in computing respondent's taxable income. We must decide whether for purposes of § 3124(a) the interest earned by the Trusts from these repos is interest on "obligations of the United States Government" or interest on loans of cash from the Trusts to the Seller-Borrower. We conclude that it is the latter, and we accordingly hold that Nebraska's taxation of the income derived by respondent from the repos does not violate § 3124(a).

An investor may earn interest income from a federal security in one or both of two ways. First, the investor may receive periodic payments from the United States Government at the interest rate stated on the face of the security. Such payments are traditionally known as "coupon interest." Second, the investor may acquire the security at a discount from the amount for which it will ultimately be redeemed by the Government at maturity. This discount is also considered interest for purposes of taxation.[4] Although "discount

[4] For example, Treasury notes and bonds, which have maturities of at least one year, pay coupon interest on a semiannual basis and may be issued at discount, par (face amount), or premium, depending on market conditions. See 31 CFR §§ 356.5(b), (c), 356.30 (1994). Treasury bills, by contrast, have maturities of not more than one year, pay no coupon interest, and are always issued at a discount. See § 356.5(a). "For purposes

interest" accrues during the term of the security, the investor does not receive it in cash until the security is redeemed or transferred to a third party.

Our examination of the typical repurchase agreement used by the Trusts convinces us that they did not earn either kind of interest on federal securities. Certainly, none of the income the Trusts earn by participating in repos can be attributed to redemptions of the securities or payments of coupon interest by the Government: The Trusts must "pay over to [the Seller-Borrower] as soon as received all principal, interest and other sums paid by or on behalf of the issuer in respect of the Securities and collected by the [Trusts]." App. 69.

Nor can we conclude that the Trusts receive discount interest when the federal securities are transferred back to the Seller-Borrower in part two of the repo. Under the typical repurchase agreement, any individual repo transaction may involve a mix of federal securities with varying maturities, and therefore varying yields. During the term of the repo, these securities earn discount interest based on their respective yields (and on whether they pay coupon interest). The Trusts, however, earn interest from the Seller-Borrower at an agreed-upon rate that is not based on any of these yields, or any combination of them. Thus, the interest that the Trusts earn by participating in the repo will bear no relation to the discount interest earned on federal securities during the same period.

We conclude instead that for purposes of § 3124(a), the interest income earned by the Trusts is interest on loans from the Trusts to the Seller-Borrower, and that the federal securities are involved in the repo transactions as collateral for

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of taxation the amount of discount at which Treasury bills are originally sold by the United States shall be considered to be interest." § 309.4. See generally M. Stigum, The Money Market 36–37 (3d ed. 1990) (hereinafter Stigum).

these loans. Several features of the repos lead to this conclusion. First, at the commencement of a repo, the Trusts pay the Seller-Borrower a fixed sum of money; at the repo's termination, the Seller-Borrower repays that sum with "interest." As explained above, this repo interest bears no relation to either the coupon interest paid or the discount interest accrued on the federal securities during the term of the repo.

Second, if the Seller-Borrower defaults on its obligation to pay its debt, the Trusts may liquidate the federal securities. But like any lender who liquidates collateral, the Trusts may retain the proceeds of liquidation only up to the amount of the debt plus expenses; any excess must be paid to the Seller-Borrower. Moreover, if the proceeds are insufficient to satisfy the debt, the Trusts may recover the deficiency from the Seller-Borrower.

Third, if the market value of the federal securities involved in the repo falls below 102% of the amount the Trusts originally paid to the Seller-Borrower, the latter must immediately deliver cash or additional securities to the Trusts to restore the value of the securities held by the Trusts to 102% of the original payment amount. On the other hand, if the market value of the securities rises above 102% of this amount, the Seller-Borrower may require the Trusts to return some of the securities to the Seller-Borrower. These provisions are consistent with a lender-borrower relationship in which a prudent lender desires to protect the value of its collateral, while a prudent borrower attempts to pledge as little collateral as possible.

Fourth, the Seller-Borrower may, during the term of the repo, "substitute" federal securities of equal market value for the federal securities initially involved in the transaction. A lender, of course, is indifferent to the particular collateral pledged by the borrower, so long as that collateral has sufficient value and liquidity.

The parties have stipulated that the Trusts (or their agents) take "Delivery" of the federal securities at the commencement of a repo. App. 63. But even this fact is consistent with understanding repos as loans of cash from the Trusts to the Seller-Borrower: "Delivery" of the securities perfects the Trusts' security interests in their collateral. Under the most recent version of § 8–321(1) of the Uniform Commercial Code (U. C. C.), "[a] security interest in a security is enforceable and can attach only if it is transferred to the secured party . . . pursuant to a provision of [§] 8–313(1)." 2C U. L. A. 459 (1991). Section 8–313(1)(a) provides that transfer of a security interest in a security occurs when the secured party "acquires possession of a certificated security."[5] *Id.*, at 402. Of course, possession of the federal securities allows the Trusts to effect an expeditious, nonjudicial liquidation of the securities if the Seller-Borrower defaults. Cf. U. C. C. § 9–504(1), 3B U. L. A. 127 (1992). The ability to liquidate immediately is obviously critical in the context of repo transactions, which may have a lifespan of only a single day.

Based on the foregoing analysis, we conclude that the interest income earned by the Trusts from repurchase agreements involving federal securities is not interest on "obligations of the United States Government." For purposes of 31 U. S. C. § 3124(a), the income is instead interest on loans from the Trusts to the Seller-Borrower. Because § 3124(a) exempts only the former type of interest from state taxation,

[5] The parties have also stipulated that delivery of the federal securities is effected "through the Federal Reserve book entry system." App. 63. Although securities held in that system exist not in the form of certificates but only as entries in the records of a Federal Reserve bank, see generally Stigum 636–638, regulations issued by the Treasury Department and other federal agencies indulge in the fiction that transferees acquire possession of certificated securities. See, *e. g.*, 31 CFR § 306.118(a) (1994) (transfer of Treasury notes and bonds); § 350.4(a) (transfer of Treasury bills). Of course, these regulations and their relationship to the U. C. C. are not before us here.

Nebraska did not violate that statute when it taxed respondent's interest income.[6]

III

Respondent offers two objections to this interpretation of § 3124(a). We find neither of them persuasive.

A

The typical repurchase agreement at issue in this case explicitly identifies the original transfer of the federal securities to the Trusts as a "sale" and the subsequent transfer back to the Seller-Borrower as a "repurchase." Respondent maintains we should honor this characterization because the repos were structured by the Trusts and the Seller-Borrower as sales and repurchases for valid business and regulatory reasons independent of tax considerations. Respondent relies on our statement in *Frank Lyon Co.* v. *United States*, 435 U. S. 561, 583–584 (1978):

> "[W]here . . . there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached, the Government should honor the allocation of rights and duties effectuated by the parties."

We do not believe it matters for purposes of § 3124(a) whether the repo is characterized as a sale and subsequent repurchase. A sale-repurchase characterization presumably would make the Trusts the "owners" of the federal securities

[6] It follows from our analysis that it is the Seller-Borrower who earns the interest on the federal securities during the pendency of the repo. Nebraska Revenue Ruling 22–85–1 concludes as much: "The interest earned on the United States government obligations remains the income of the [party] who submitted the securities as collateral for the loan." Brief for Petitioner 4–5, n. 1.

during the term of the repo. But the dispositive question is whether the Trusts earned interest on "obligations of the United States Government," not whether the Trusts "owned" such obligations. As respondent himself concedes, "[t]he concept of 'ownership' is simply not an issue under 31 U. S. C. § 3124." Brief for Respondent 10.

Even if it did matter how repos were characterized for purposes of § 3124(a), *Frank Lyon Co.* does not support respondent's position. Whatever the language relied on by respondent may mean, our decision in that case to honor the taxpayer's characterization of its transaction as a "sale-and-leaseback" rather than a "financing transaction" was founded on an examination of "the substance and economic realities of the transaction." 435 U. S., at 582. This examination included identification of 27 specific facts. See *id.*, at 582–583. The substance and economic realities of the Trusts' repo transactions, as manifested in the specific facts discussed above, are that the Trusts do not receive either coupon interest or discount interest from federal securities by participating in repos. Rather, in economic reality, the Trusts receive interest on cash they have lent to the Seller-Borrower.

Respondent does not specifically dispute this conclusion but argues that repos are characterized as ordinary sales and repurchases for purposes of federal securities, bankruptcy, and banking law as well as commercial and local government law. We need not examine the accuracy of these assertions, for we are not called upon in this case to interpret any of those bodies of law. Our decision today is an interpretation only of 31 U. S. C. § 3124(a)—not the Securities Exchange Act of 1934, the Bankruptcy Code, or any other body of law.

B

At oral argument, respondent advanced another argument against the interpretation of § 3124(a) adopted here: Although petitioner's Revenue Ruling nominally acknowledges the right of the Seller-Borrower to claim the exemption granted by § 3124(a), Nebraska's income tax scheme will not

allow the Seller-Borrower to realize the full amount of the federal exemption. This would allegedly frustrate Congress' purpose in granting the exemption. According to respondent, after the Seller-Borrower has subtracted from its taxable income any "interest or dividends received by [it as] the owner of obligations of the United States," pursuant to subsection (a) of Neb. Rev. Stat. § 77–2716(1) (Supp. 1994), it will then be forced to add back "any interest on indebtedness incurred to carry the [federal] obligations," pursuant to subsection (e)(i) of § 77–2716(1). Respondent conjectures that the interest paid by the Seller-Borrower to the Trusts in the course of repos may constitute just such interest. Respondent therefore hypothesizes that if the Seller-Borrower receives, for example, $100 in interest as the holder of federal securities and pays out $90 to the Trusts in the course of repos involving those securities, Nebraska might give the Seller-Borrower an income tax exemption worth only $10 ($100 minus $90), rather than the $100 exemption that Congress arguably intended.

There is a short answer to respondent's multilayered hypothesis: *this case* does not involve the construction or validity of Nebraska's add-back rule as applied in the repo context. The Nebraska Supreme Court did not cite § 77–2716(1)(e)(i) in its opinion, and we did not grant certiorari to consider that provision.

IV

Finally, respondent argues that Nebraska's taxation of income from repos involving federal securities violates the Supremacy Clause of the Constitution. First, respondent contends that Nebraska discriminates against federal obligations because it does not tax income from repos involving Nebraska's own state and local obligations. Although Nebraska Revenue Ruling 22–85–1 concerns repos involving "federal government obligations" and does not mention their Nebraska counterparts, respondent has pointed to no statute, revenue ruling, or other manifestation of Nebraska pol-

icy treating "state" repos any different from "federal" repos for tax purposes.

Second, respondent cites our decision in *Rockford Life Ins. Co.* v. *Illinois Dept. of Revenue*, 482 U. S. 182, 190 (1987), in which we stated that "the intergovernmental tax immunity doctrine . . . is based on the proposition that the borrowing power is an essential aspect of the Federal Government's authority and, just as the Supremacy Clause bars the States from directly taxing federal property, it also bars the States from taxing federal obligations in a manner which has an adverse effect on the United States' borrowing ability." According to respondent, undisputed expert testimony in the record establishes that the taxation at issue in this case will make it more difficult and expensive for the Federal Government to finance the national debt.

This expert testimony essentially consists of a 1986 affidavit sworn by Peter D. Sternlight, a former official of the Federal Reserve Bank of New York. In our view, Sternlight's affidavit has no relevance to this case. It concluded only that "an impairment of the repo market would make it less attractive for [government securities] dealers to perform [their] very useful . . . function [of underwriting a sizeable portion of Treasury securities], thus adding to Treasury interest costs." App. 42. But the "impairment" that worried Sternlight would result "[i]f repurchase agreements were to lose their present characteristics of flexibility and liquidity," or if repos became "unavailable" to certain kinds of public and private institutional investors. *Id.*, at 42, 43. These possibilities might develop if repos were to be characterized as secured loans for purposes of federal bankruptcy and banking law or of commercial and local government law. Our decision today, however, says nothing about how repos should be characterized for those purposes.[7]

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[7] See also Brief for Federal Reserve Bank of New York as *Amicus Curiae* 9–10 ("The Sternlight Affidavit was filed by the New York Fed in 1986 as *amicus curiae* in [a case] which had nothing to do with state

Disregarding the inapplicable Sternlight affidavit, we find no evidence in the record that the taxation at issue will impair the market in federal securities or otherwise impair the borrowing ability of the Federal Government. *Rockford Life* confirmed the rule that "'when effort is made . . . to establish the unconstitutional character of a particular tax by claiming its remote effect will be to impair the borrowing power of the government, courts . . . ought to have something more substantial to act upon than mere conjecture. The injury ought to be obvious and appreciable.'" 482 U. S., at 190, n. 10 (quoting *Plummer* v. *Coler*, 178 U. S. 115, 137–138 (1900)). Respondent has shown us no "obvious and appreciable" injury to the borrowing power of the United States Government as a result of Nebraska's taxation of the repo income earned by the Trusts. Rather, he has given us "mere conjecture." In these circumstances, we cannot justifiably conclude that Nebraska's taxation of income derived from repos involving federal securities violates the Supremacy Clause of the Constitution.

For the foregoing reasons, the judgment of the Supreme Court of Nebraska is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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taxation of repo income. . . . Mr. Sternlight did not opine on the economic effect of state taxation of repo transaction income on [the market for] the underlying government securities"); Hearings on H. R. 2852 and H. R. 3418 before the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary, 98th Cong., 2d Sess., 106–107 (1984) (letter of Peter D. Sternlight) ("[W]hile the Federal Reserve has gone on record as favoring purchase-and-sale characterization of repurchase agreements, *that statement is limited to a bankruptcy context and should not be taken as an endorsement of purchase-and-sale characterization for tax, accounting, or other purposes*" (emphasis added)).

Syllabus

INTERSTATE COMMERCE COMMISSION *v.* TRANSCON LINES ET AL.

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

No. 93–1318. Argued November 1, 1994—Decided January 10, 1995

The Interstate Commerce Act grants petitioner Interstate Commerce Commission (ICC) authority to set the exclusive means by which common carriers extend credit to shippers. Under the ICC's regulations, credit may be extended for periods of up to 30 days, and, if shippers fail to pay, carriers may assess interest charges and liquidated damages to cover collection costs. In this suit to enjoin the trustee in bankruptcy appointed for respondent motor carrier, Transcon Lines, from collecting liquidated damages from Transcon's former customers, the ICC asserted that Transcon had violated three of the credit regulations' procedural requirements: Its bills did not advise shippers of the consequences of late payment; revised bills were not issued within 90 days after the expiration of the authorized credit period; and damages were applied by a bankruptcy trustee on an aggregate basis. The District Court granted summary judgment for respondents, and the Court of Appeals affirmed in relevant part, holding that the filed rate doctrine and this Court's decision in *Maislin Industries, U. S., Inc.* v. *Primary Steel, Inc.*, 497 U. S. 116, barred the ICC from enforcing its credit regulations in a manner that would prevent collection of a filed rate. On remand from this Court, the Court of Appeals adhered to that determination.

Held: The filed rate doctrine does not bar the injunction the ICC seeks. The Act grants the ICC broad authority to bring civil actions to enforce the statute and regulations or orders issued under it. This Court has specified that seeking a federal-court injunction to require a carrier to comply with the regulations is such an enforcement power. *Southern Pacific Transp. Co.* v. *Commercial Metals Co.*, 456 U. S. 336, 352, 349. Although not without limits, the ICC's judgment that a particular remedy is an appropriate exercise of its enforcement authority is entitled to some deference. Two substantial reasons support the conclusion that the remedy chosen in this case is appropriate. First, it is necessary to the effective enforcement of the ICC's regulations. Should the injunction be disallowed, trustees of bankrupt carriers would be immune, in effect, from enforcement of the credit regulations. Second, the remedy serves the intended beneficiaries of the violated regulations: shippers, whom the regulations protect from the imposition of penalties without

warning. *Id.*, at 345–346, distinguished. Neither *Maislin* nor this Court's other filed rate cases suggest that the doctrine prohibits the ICC from requiring departure from a filed rate when necessary to enforce other specific and valid regulations adopted under the Act. Contrary to respondents' contention, the ICC is not seeking to enforce a secret, unfiled rate in place of a filed rate, but is seeking to enforce the rate for shipping over the rate for shipping plus collection efforts. Pp. 144–149.

9 F. 3d 64, reversed and remanded.

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

Deputy Solicitor General Wallace argued the cause for petitioner. With him on the briefs were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Michael R. Dreeben*, *Anthony J. Steinmeyer*, *Henri F. Rush*, *Ellen D. Hanson*, and *Evelyn G. Kitay.*

Leonard L. Gumport argued the cause for respondents. With him on the briefs were *Joseph L. Steinfeld, Jr.*, *Robert B. Walker*, *John T. Siegler*, and *Richard S. Berger.**

JUSTICE KENNEDY delivered the opinion of the Court.

Though recent Acts of Congress have made substantial changes in the regulation of interstate motor carriers, see Negotiated Rates Act of 1993, 107 Stat. 2044; Trucking Industry Regulatory Reform Act of 1994, 108 Stat. 1683, this case arises under the law in effect before those enactments. We address once again the Interstate Commerce Act's filed rate requirements, 49 U. S. C. §§ 10761(a), 10762(a)(1), and

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*Briefs of *amici curiae* urging reversal were filed for the Health and Personal Care Distribution Conference, Inc., et al. by *Daniel J. Sweeney*, *Frederic L. Wood*, and *Nicholas J. DiMichael;* and for the Transportation Claims and Prevention Council by *William J. Augello* and *Mary Kay Reynolds.*

Briefs of *amici curiae* urging affirmance were filed for the International Brotherhood of Teamsters by *Marc J. Fink*, *Judith A. Scott*, and *James A. McCall;* and for Lloyd T. Whitaker as Trustee for the Estate of Olympia Holding Corp. by *Kim D. Mann.*

their bearing on the authority of the Interstate Commerce Commission (ICC) to enforce related provisions of the Act and regulations adopted under it.

Under the filed rate doctrine applicable to the transactions here in question, motor carriers were required to publish their shipping rates in tariffs filed with the ICC and to receive only the published rates. *Ibid.* Our cases have taught the necessity of strict compliance with this scheme. *E. g., Maislin Industries, U. S., Inc.* v. *Primary Steel, Inc.*, 497 U. S. 116 (1990); *Louisville & Nashville R. Co.* v. *Maxwell*, 237 U. S. 94, 97 (1915). The question now presented is whether the filed rate doctrine bars the ICC from obtaining injunctive relief to enforce its credit regulations in a manner that would prevent collection of a rate filed in a published tariff. We hold that the filed rate doctrine does not bar the injunction the ICC seeks.

I

Transcon Lines (Transcon) was once the 12th largest motor carrier in the United States, operating under authorization from the ICC. Like many other carriers, Transcon became a victim of the heightened competition resulting from Congress' partial deregulation of the motor carrier industry in 1980. See Motor Carrier Act of 1980, 94 Stat. 793. In May 1990, Transcon consented to an order for relief pursuant to an involuntary bankruptcy petition filed against it under Chapter 11. The trustee appointed by the Bankruptcy Court followed the practice of some other trustees for the estates of bankrupt carriers and sought to collect undercharges from Transcon's former customers. The trustee sought not only to collect unpaid freight charges but also to collect liquidated damages for late payment. Some 3,000 adversary proceedings brought by the trustee against Transcon's former customers are pending, and the ICC estimates the liquidated damages in question total about $15 million.

The Act bars common carriers subject to the ICC's jurisdiction from extending credit for their services except "[u]nder regulations of the [ICC] governing the payment for transportation and service and preventing discrimination." 49 U. S. C. §§ 10743(b)(1), 10743(a). By regulations under this express statutory delegation, the ICC has set out in detail the exclusive means by which common carriers can extend credit to shippers. See 49 CFR pt. 1320 (1994). Under the regulations, carriers are authorized to establish credit periods of up to 30 calendar days, §§ 1320.2(c), (d), and, if shippers fail to pay their charges within the established credit period, to assess service (or interest) charges, § 1320.2(e). Carriers also may assess liquidated damages to cover collection costs, either by a tariff rule or through contract terms in their bills of lading. §§ 1320.2(g)(1), (3). Before collecting liquidated damages by tariff rule, however, a carrier must follow specified procedural requirements.

First, the timing and conditions of any potential liquidated damages must be described clearly in the carrier's filed tariff. § 1320.2(g)(2)(i). Second, the original bill sent to the shipper must set forth any liquidated damages that would be assessed for failure to make timely payment of the freight charges. § 1320.3(c). Third, within 90 days after expiration of the authorized credit period the carrier must "issu[e] a revised freight bill or notice of imposition of collection expense charges for late payment." § 1320.2(g)(2)(vi). Finally, liquidated damages "[s]hall be applied only to the nonpayment of original, separate and independent freight bills and shall not apply to aggregate *balance-due* claims sought for collection on past shipments by a bankruptcy trustee, or any other person or agent . . . ." § 1320.2(g)(2)(iii).

Upon satisfying these requirements, carriers may assess liquidated damages through a tariff rule by one of two methods. The first is "to assess liquidated damages as a separate additional charge to the unpaid freight bill." § 1320.2(g)(1)(i). The second is to charge the shipper a "full, nondis-

counted rate instead of the discounted rate [that might otherwise be] applicable." § 1320.2(g)(1)(ii). Transcon used the second, so-called loss-of-discount method to assess liquidated damages. The measure of liquidated damages under this method is prescribed by an ICC regulation. It provides:

> "The difference between the discount and the full rate constitutes a carrier's liquidated damages for its collection effort. Under this method the tariff shall identify the discount rates that are subject to the condition precedent and which require the shipper to make payment by a date certain." *Ibid.*

Transcon's customers had been charged discount rates, expressed as a percentage of a generic bureau rate. To collect liquidated damages, the trustee demanded the nondiscount bureau rate from former customers who had failed to pay their original discount charges on time.

The ICC sued in the United States District Court for the Central District of California to enjoin the trustee from collecting loss-of-discount liquidated damages. It did not allege that Transcon had failed to state its liquidated damages provisions in its filed tariff. Transcon had specified in its "rules tariff" that "discounts . . . shall apply only when tariff charges are paid within 90 calendar days from date of shipment." ICC TCON 103–A, Item 210, 1 Supplemental Excerpts of Record 41. The ICC did assert, though, that Transcon had violated each of the three other liquidated damages requirements set out above. Transcon's original bills did not advise shippers of the consequences of late payment, as required by § 1320.3(c); revised bills were not issued until several years after the 90-day period provided in § 1320.2(g)(2)(vi); and the loss-of-discount provision was being applied by a bankruptcy trustee on an aggregate basis, contrary to § 1320.2(g)(2)(iii). The requested injunction would prohibit the trustee from pursuing claims in violation of those requirements.

The District Court granted summary judgment for respondents, and the United States Court of Appeals for the Ninth Circuit affirmed in relevant part, *ICC* v. *Transcon Lines*, 990 F. 2d 1503 (1993) (as amended on denial of rehearing and rehearing en banc). The Court of Appeals understood that the ICC as a general matter is authorized to enforce its credit regulations by seeking an injunction, see 49 U. S. C. §§ 11702(a)(4), (a)(6). It also recognized, or at least implied, that the credit regulations are valid on their face, but said that "[r]egulations, however valid in other contexts, cannot furnish the reason for letting the carrier abandon the filed rate." *Transcon*, *supra*, at 1514. Relying on our decision in *Maislin Industries, U. S., Inc.* v. *Primary Steel, Inc.*, 497 U. S. 116 (1990), that the filed rate doctrine bars the ICC from interpreting the unreasonable practice rule to prevent collection of a filed rate where a carrier had agreed to a lower one, the court concluded that "[t]he ICC's interpretation of [the liquidated damages] regulations . . . has no greater force than the policy rejected in *Maislin*." 990 F. 2d, at 1514. It held that "the filed rate doctrine trumps the manner in which the ICC seeks to regulate carrier credit in this case." *Ibid.*

After the Court of Appeals issued its opinion, we decided *Reiter* v. *Cooper*, 507 U. S. 258 (1993). The Court addressed whether a shipper's unreasonable rate claim could be raised in a carrier's suit to collect the difference between the amount charged and the higher amount due under the tariff, or whether the shipper's claim had to be raised in a separate proceeding before the ICC. We held the filed rate doctrine does not bar shippers from raising claims and defenses accorded by the Act, even if this results in defeating collection of a filed rate, and allowed the shipper to allege, subject to the ordinary rules governing counterclaims, an unreasonable-rate counterclaim to the carrier's undercharge action. *Id.*, at 262–267. In light of *Reiter*, we vacated the Court of Appeals' judgment in the instant matter and remanded for further consideration.

On remand, the Court of Appeals adhered to its earlier determination. 9 F. 3d 64 (CA9 1993). It found *Reiter* distinguishable but concluded that, even if it were apposite, *Reiter* did no more than require a balancing of the carrier's argument based on the filed rate doctrine against the ICC's argument based on the credit regulations. 9 F. 3d, at 66. It thought the balance tilted in favor of disallowing relief. A grant of an injunction would, the Court of Appeals reasoned, "permit an end-run around the filed rate doctrine" by allowing a carrier and shipper to negotiate a private discount from the filed rate, while denying the injunction would still leave the ICC with "a wide array of tools for enforcing its credit regulations." *Id.*, at 67.

We again granted certiorari, 511 U. S. 1029 (1994), and now reverse.

II

Just as *Reiter* was in important respects "a sequel to our decision in *Maislin*," 507 U. S., at 260, this case is a sequel to our decision in *Southern Pacific Transp. Co.* v. *Commercial Metals Co.*, 456 U. S. 336 (1982). In *Commercial Metals*, the carrier released goods to the consignee before payment, but failed to investigate the consignee's credit standing, as ICC regulations required, 49 CFR § 1320.1 (1981). See 456 U. S., at 339, 341, and n. 6. When collection against the consignee proved fruitless and the carrier turned to the shipper for payment, the shipper sought to raise the carrier's violation as a defense. We held the defense improper when raised by the shipper, noting our reluctance to grant the shipper an implied remedy when the statutory scheme did not grant an express one. *Id.*, at 345–348. We went on to say, however, that the case would have been quite different had it involved the ICC's seeking injunctive relief, a remedy for which it has specific authority under the Act. We held that "[t]he remedies for a carrier's violations of the regulations are best left to the ICC for such resolution as it thinks proper," and specified that "the ICC has ample authority to police the

credit practices of carriers . . . [by] seek[ing] a federal-court injunction requiring a carrier to comply with the regulations . . . ." *Id.*, at 352, 349. We conclude that the ICC here is exercising the enforcement powers we acknowledged in *Commercial Metals.*

The Act grants the ICC broad authority to bring civil actions to enforce the statute and regulations or orders issued under it. 49 U. S. C. § 11702. As respondents themselves concede, the trustee is attempting in this case to collect liquidated damages in violation of the ICC's credit regulations. See Brief in Opposition 4–5. To the extent the injunction applies to "a bankruptcy trustee" applying liquidated damages "to aggregate *balance-due* claims sought for collection on past shipments," the ICC seeks a prospective bar to the trustee's violation of 49 CFR § 1320.2(g)(2)(iii) (1994). This aspect of the ICC's suit is, in effect, a compliance action—the precise relief the Court approved in *Commercial Metals.* To the extent the ICC seeks to enjoin collection of liquidated damages as a remedy for Transcon's lack of notification in the original bills, see 49 CFR § 1320.3(c) (1992), and nonissuance of revised bills within 90 days, see § 1320.2(g)(2)(vi), this remedy too is appropriate.

The Court's observation in *Commercial Metals* that the choice of remedies for violation of its regulations is "best left to the ICC," 456 U. S., at 352, was a particular invocation of the general principle that "the relation of remedy to policy is peculiarly a matter for administrative competence," *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 194 (1941); *ICC* v. *American Trucking Assns., Inc.*, 467 U. S. 354, 355 (1984) (ICC "has discretion to fashion remedies in furtherance of its statutory responsibilities") (citing *Trans Alaska Pipeline Rate Cases*, 436 U. S. 631, 654 (1978)). Although the ICC's authority to determine proper remedies for violations under the Act is not without limits, its judgment that a particular remedy is an appropriate exercise of its enforcement authority under 49 U. S. C. § 11702(a)(4) is entitled to some defer-

ence. Two substantial reasons support our conclusion that the remedy chosen by the agency is an appropriate one.

First, its remedy appears to the ICC, and to us, necessary to the effective enforcement of its regulations. See *Commercial Metals*, *supra*, at 350, 352; see also *Hewitt-Robins Inc.* v. *Eastern Freight-Ways, Inc.*, 371 U. S. 84, 88 (1962) (remedy allowed where its absence would "plac[e] the shipper entirely at the mercy of the carrier"). Were we to disallow the injunction, respondents and other trustees of bankrupt carriers would be immune, in effect, from enforcement of the credit regulations. Relief limited to prospective injunctions requiring carriers to provide notice of liquidated damages and to send revised bills could have no effect on bankrupt carriers and their trustees. Nor do the Act's remedies for unlawful rates, see 49 U. S. C. §§ 10704(b)(1), 11705(b)(3), allow for adequate enforcement of the credit regulations, for not every credit violation will result in an unlawful rate.

Second, unlike the credit regulation violated in *Commercial Metals*, which was intended to protect carriers, 456 U. S., at 345–346, the requirements for notice of liquidated damages are to protect shippers from the imposition of penalties without warning. When a carrier fails to provide notice, it is an appropriate remedy for the ICC to bar collection of the liquidated damages, for the remedy serves the regulations' intended beneficiaries. Cf. *id.*, at 344–345 (regulations do not "intimate that a carrier's violation of the credit rules [there at issue] automatically precludes it from collecting the lawful freight charge").

In short, whether or not we would allow shippers to defend against a carrier's collection action by relying on the carrier's violation of credit regulations, it follows from *Commercial Metals* and our construction of the controlling statute that the ICC has the authority and the discretion to determine appropriate remedies for these violations. Where, as here, the remedy involves "a federal-court injunction re-

quiring a carrier to comply with the regulations," *id.*, at 349; constitutes a reasonable and necessary means to effect enforcement of the ICC's credit regulations; and protects the intended beneficiaries of the violated regulations, we believe the injunction is authorized under the Act.

In *Maislin* we concluded the ICC's policy and its interpretation of the Act were "flatly inconsistent with the statutory scheme as a whole." 497 U. S., at 131. We rejected the ICC's enforcement policy, just as we had declined to permit general, nonstatutory equitable defenses in a collection suit. Our concern was that the policy would undercut the whole filed rate system, thus permitting shippers to enforce secret, negotiated, unfiled rates and allowing carriers to discriminate in favor of certain customers. *Id.*, at 130–131.

Neither *Maislin* nor our other filed rate cases suggest that the filed rate doctrine prohibits the ICC from requiring departure from a filed rate when necessary to enforce other specific and valid regulations adopted under the Act, regulations that are consistent with the filed rate system and compatible with its effective operation. Carriers must comply with the comprehensive scheme provided by the statute and regulations promulgated under it, and their failure to do so may justify departure from the filed rate. In *Reiter*, for example, we confirmed that the filed rate doctrine "assuredly does not preclude avoidance of the tariff rate . . . through claims and defenses that are specifically accorded by the [Act] itself." 507 U. S., at 266 (emphasis deleted). Here, of course, the ICC can and does rely upon *Commercial Metals*, governing the powers of the ICC and not the defenses available to shippers. As we acknowledged in *Maislin*, the ICC can require that filed rates be "'suspended or set aside'" in various circumstances. 497 U. S., at 126 (quoting *Keogh* v. *Chicago & Northwestern R. Co.*, 260 U. S. 156, 163 (1922)); see also *ICC* v. *American Trucking Assns.*, *supra*, at 360 ("[T]he Commission may conduct an investigation into a tariff's lawfulness at any time after it has gone into effect," and

where a tariff violates the Act, "the Commission has authority to cancel the tariff and require that a reasonable and nondiscriminatory rate apply in the future. § 10704(b)(1)").

Any remaining doubts as to the appropriateness of the relief sought are dispelled upon close examination of respondents' particular contention that an injunction here would displace the tariff system by substituting a private agreement for the filed rate. This is not so. The charge that cannot be collected is, as respondents themselves concede, Tr. of Oral Arg. 24, the charge for liquidated damages. The ICC has said in a regulation promulgated under the Act that "[t]he difference between the discount and the full rate constitutes a carrier's liquidated damages for its collection effort." 49 CFR § 1320.2(g)(1)(ii) (1994); see 49 U. S. C. § 10743(b)(1) (Act authorizes the extension of credit—and therefore any liquidated damages resulting from the extension of credit—only pursuant to ICC regulations). The regulation is entitled to deference as an interpretation of the Act. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Thus, the ICC is not seeking to enforce a secret, unfiled rate in place of a filed rate, but is seeking to enforce the rate for shipping over the rate for shipping plus collection efforts. See *Hewitt-Robins Inc.* v. *Eastern Freight-Ways, Inc.*, 371 U. S., at 88 (enforcing lower of two filed rates in no manner "hampers the efficient administration of the Act").

III

The Act by express terms authorizes the ICC to promulgate credit regulations. It also gives the ICC "the power to seek a federal-court injunction requiring a carrier to comply with [its credit] regulations." *Commercial Metals*, 456 U. S., at 349 (citation omitted). The injunctive relief sought by the ICC is both necessary and appropriate to effective enforcement of its valid credit regulations, and does not "permi[t] the very price discrimination that the Act by its

terms seeks to prevent." *Maislin*, 497 U. S., at 130. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

TOME *v.* UNITED STATES

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

No. 93–6892. Argued October 5, 1994—Decided January 10, 1995

Petitioner Tome was charged with sexually abusing his daughter A. T. when she was four years old. The Government theorized that he committed the assault while A. T. was in his custody and that the crime was disclosed while she was spending vacation time with her mother. The defense countered that the allegations were concocted so A. T. would not be returned to her father, who had primary physical custody. A. T. testified at the trial, and, in order to rebut the implicit charge that her testimony was motivated by a desire to live with her mother, the Government presented six witnesses who recounted out-of-court statements that A. T. made about the alleged assault while she was living with her mother. The District Court admitted the statements under, *inter alia*, Federal Rule of Evidence 801(d)(1)(B), which provides that prior statements of a witness are not hearsay if they are consistent with the witness' testimony and offered to rebut a charge against the witness of "recent fabrication or improper influence or motive." Tome was convicted, and the Court of Appeals affirmed, adopting the Government's argument that A. T.'s statements were admissible even though they had been made after her alleged motive to fabricate arose. Reasoning that the premotive requirement is a function of relevancy, not the hearsay rules, the court balanced A. T.'s motive to lie against the probative value of one of the statements and determined that the District Court had not erred in admitting the statements.

Held: The judgment is reversed, and the case is remanded.

3 F. 3d 342, reversed and remanded.

JUSTICE KENNEDY delivered the opinion of the Court, except as to Part II–B, concluding:

1. Rule 801(d)(1)(B) permits the introduction of a declarant's consistent out-of-court statements to rebut a charge of recent fabrication or improper influence or motive only when those statements were made before the charged fabrication, influence, or motive, conditions that were not established here. Pp. 156–160, 163–166.

(a) Rule 801(d)(1)(B) embodies the prevailing common-law rule in existence for more than a century before the Federal Rules of Evidence were adopted: A prior consistent statement introduced to rebut a charge of recent fabrication or improper influence or motive was admissible if

the statement had been made before the alleged fabrication, influence, or motive came into being but was inadmissible if made afterwards. The Rule's language speaks of rebutting charges of recent fabrication and improper influence and motive to the exclusion of other forms of impeachment, and it bears close similarity to the language used in many of the common-law premotive requirement cases. Pp. 156–160.

(b) The Government's argument that the common-law rule is inconsistent with the Federal Rules' liberal approach to relevancy misconceives the design of the Rules' hearsay provisions. Hearsay evidence is often relevant. But if relevance were the sole criterion of admissibility, it would be difficult to account for the Rules' general proscription of hearsay testimony or the traditional analysis of hearsay that the Rules, for the most part, reflect. The Government's reliance on academic commentators critical of excluding a witness' out-of-court statements is also misplaced. The Advisory Committee rejected the balancing approach such commentators proposed when the Rules were adopted. The approach used by the Court of Appeals here creates the precise dangers the Advisory Committee sought to avoid: It involves considerable judicial discretion, reduces predictability, and enhances the difficulties of trial preparation because parties will have difficulty knowing in advance whether or not particular out-of-court statements will be admitted. Pp. 163–165.

(c) The instant case illustrates some of the important considerations supporting the foregoing interpretation. Permitting the introduction of prior statements as substantive evidence to rebut every implicit charge that a witness' in-court testimony results from recent fabrication or improper influence or motive would shift the trial's whole emphasis to the out-of-court, rather than the in-court, statements. It may be difficult to ascertain when a particular fabrication, influence, or motive arose in some cases. However, a majority of common-law courts were performing this task for over a century, and the Government has presented no evidence that those courts or the courts that adhere to the rule today have been unable to make the determination. Pp. 165–166.

2. The admissibility of A. T.'s statements under Rule 803(24) or any other evidentiary principle is left for the Court of Appeals to decide in the first instance. Pp. 166–167.

KENNEDY, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A, II–C, and III, in which STEVENS, SCALIA, SOUTER, and GINSBURG, JJ., joined, and an opinion with respect to Part II–B, in which STEVENS, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 167. BREYER, J., filed a dissenting opinion, in

which REHNQUIST, C. J., and O'CONNOR and THOMAS, JJ., joined, *post*, p. 169.

Joseph W. Gandert argued the cause for petitioner. With him on the briefs were *Tova Indritz* and *Carol H. Marion*.

Deputy Solicitor General Wallace argued the cause for the United States. With him on the briefs were *Solicitor General Days*, *Assistant Attorney General Harris*, *Paul R. Q. Wolfson*, and *Deborah Watson*.*

JUSTICE KENNEDY delivered the opinion of the Court, except as to Part II–B.

Various Federal Courts of Appeals are divided over the evidence question presented by this case. At issue is the interpretation of a provision in the Federal Rules of Evidence bearing upon the admissibility of statements, made by a declarant who testifies as a witness, that are consistent with the testimony and are offered to rebut a charge of a "recent fabrication or improper influence or motive." Fed. Rule Evid. 801(d)(1)(B). The question is whether out-of-court consistent statements made after the alleged fabrication, or after the alleged improper influence or motive arose, are admissible under the Rule.

I

Petitioner Tome was charged in a one-count indictment with the felony of sexual abuse of a child, his own daughter,

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*A brief of *amicus curiae* urging affirmance was filed for the State of Ohio et al. by *Lee Fisher*, Attorney General of Ohio, *Richard A. Cordray*, State Solicitor, and *Simon B. Karas*, and by the Attorneys General for their respective States as follows: *Jimmy Evans* of Alabama, *Bruce M. Botelho* of Alaska, *Larry EchoHawk* of Idaho, *Pamela Carter* of Indiana, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Jeffery B. Pine* of Rhode Island, *T. Travis Medlock* of South Carolina, *Jan Graham* of Utah, and *Jeffrey L. Amestoy* of Vermont.

Bruce Robert Rogoff filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae*.

aged four at the time of the alleged crime. The case having arisen on the Navajo Indian Reservation, Tome was tried by a jury in the United States District Court for the District of New Mexico, where he was found guilty of violating 18 U. S. C. §§ 1153, 2241(c), and 2245(2)(A) and (B).

Tome and the child's mother had been divorced in 1988. A tribal court awarded joint custody of the daughter, A. T., to both parents, but Tome had primary physical custody. In 1989 the mother was unsuccessful in petitioning the tribal court for primary custody of A. T., but was awarded custody for the summer of 1990. Neither parent attended a further custody hearing in August 1990. On August 27, 1990, the mother contacted Colorado authorities with allegations that Tome had committed sexual abuse against A. T.

The prosecution's theory was that Tome committed sexual assaults upon the child while she was in his custody and that the crime was disclosed when the child was spending vacation time with her mother. The defense argued that the allegations were concocted so the child would not be returned to her father. At trial A. T., then 6½ years old, was the Government's first witness. For the most part, her direct testimony consisted of one- and two-word answers to a series of leading questions. Cross-examination took place over two trial days. The defense asked A. T. 348 questions. On the first day A. T. answered all the questions posed to her on general, background subjects.

The next day there was no testimony, and the prosecutor met with A. T. When cross-examination of A. T. resumed, she was questioned about those conversations but was reluctant to discuss them. Defense counsel then began questioning her about the allegations of abuse, and it appears she was reluctant at many points to answer. As the trial judge noted, however, some of the defense questions were imprecise or unclear. The judge expressed his concerns with the examination of A. T., observing there were lapses of as much as 40–55 seconds between some questions and the answers

and that on the second day of examination the witness seemed to be losing concentration. The trial judge stated, "We have a very difficult situation here."

After A. T. testified, the Government produced six witnesses who testified about a total of seven statements made by A. T. describing the alleged sexual assaults: A. T.'s babysitter recited A. T.'s statement to her on August 22, 1990, that she did not want to return to her father because he "gets drunk and he thinks I'm his wife"; the babysitter related further details given by A. T. on August 27, 1990, while A. T.'s mother stood outside the room and listened after the mother had been unsuccessful in questioning A. T. herself; the mother recounted what she had heard A. T. tell the babysitter; a social worker recounted details A. T. told her on August 29, 1990, about the assaults; and three pediatricians, Drs. Kuper, Reich, and Spiegel, related A. T.'s statements to them describing how and where she had been touched by Tome. All but A. T.'s statement to Dr. Spiegel implicated Tome. (The physicians also testified that their clinical examinations of the child indicated that she had been subjected to vaginal penetrations. That part of the testimony is not at issue here.)

A. T.'s out-of-court statements, recounted by the six witnesses, were offered by the Government under Rule 801(d)(1)(B). The trial court admitted all of the statements over defense counsel's objection, accepting the Government's argument that they rebutted the implicit charge that A. T.'s testimony was motivated by a desire to live with her mother. The court also admitted A. T.'s August 22d statement to her babysitter under Rule 803(24), and the statements to Dr. Kuper (and apparently also to Dr. Reich) under Rule 803(4) (statements for purposes of medical diagnosis). The Government offered the testimony of the social worker under both Rules 801(d)(1)(B) and 803(24), but the record does not indicate whether the court ruled on the latter ground. No

objection was made to Dr. Spiegel's testimony. Following trial, Tome was convicted and sentenced to 12 years' imprisonment.

On appeal, the Court of Appeals for the Tenth Circuit affirmed, adopting the Government's argument that all of A. T.'s out-of-court statements were admissible under Rule 801(d)(1)(B) even though they had been made after A. T.'s alleged motive to fabricate arose. The court reasoned that "the pre-motive requirement is a function of the relevancy rules, not the hearsay rules" and that as a "function of relevance, the pre-motive rule is clearly too broad . . . because it is simply not true that an individual with a motive to lie always will do so." 3 F. 3d 342, 350 (1993). "Rather, the relevance of the prior consistent statement is more accurately determined by evaluating the strength of the motive to lie, the circumstances in which the statement is made, and the declarant's demonstrated propensity to lie." *Ibid.* The court recognized that some Circuits require that the consistent statements, to be admissible under the Rule, must be made before the motive or influence arose, see, *e. g.*, *United States* v. *Guevara*, 598 F. 2d 1094, 1100 (CA7 1979); *United States* v. *Quinto*, 582 F. 2d 224, 234 (CA2 1978), but cited the Ninth Circuit's decision in *United States* v. *Miller*, 874 F. 2d 1255, 1272 (1989), in support of its balancing approach. Applying this balancing test to A. T.'s first statement to her babysitter, the Court of Appeals determined that although A. T. might have had "some motive to lie, we do not believe that it is a particularly strong one." 3 F. 3d, at 351. The court held that the District Judge had not abused his discretion in admitting A. T.'s out-of-court statements. It did not analyze the probative quality of A. T.'s six other out-of-court statements, nor did it reach the admissibility of the statements under any other rule of evidence.

We granted certiorari, 510 U. S. 1109 (1994), and now reverse.

II

The prevailing common-law rule for more than a century before adoption of the Federal Rules of Evidence was that a prior consistent statement introduced to rebut a charge of recent fabrication or improper influence or motive was admissible if the statement had been made before the alleged fabrication, influence, or motive came into being, but it was inadmissible if made afterwards. As Justice Story explained: "[W]here the testimony is assailed as a fabrication of a recent date, . . . in order to repel such imputation, proof of the *antecedent* declaration of the party may be admitted." *Ellicott* v. *Pearl*, 10 Pet. 412, 439 (1836) (emphasis added). See also *People* v. *Singer*, 300 N. Y. 120, 124–125, 89 N. E. 2d 710, 712 (1949).

McCormick and Wigmore stated the rule in a more categorical manner: "[T]he applicable principle is that the prior consistent statement has no relevancy to refute the charge unless the consistent statement was made before the source of the bias, interest, influence or incapacity originated." E. Cleary, McCormick on Evidence § 49, p. 105 (2d ed. 1972) (hereafter McCormick). See also 4 J. Wigmore, Evidence § 1128, p. 268 (J. Chadbourn rev. 1972) (hereafter Wigmore) ("A consistent statement, at a *time prior* to the existence of a fact said to indicate bias . . . will effectively explain away the force of the impeaching evidence" (emphasis in original)). The question is whether Rule 801(d)(1)(B) embodies this temporal requirement. We hold that it does.

A

Rule 801 provides:

> "(d) Statements which are not hearsay.—A statement is not hearsay if—
>
> "(1) Prior statement by witness.—The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . .

> "(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive."

Rule 801 defines prior consistent statements as nonhearsay only if they are offered to rebut a charge of "recent fabrication or improper influence or motive." Fed. Rule Evid. 801(d)(1)(B). Noting the "troublesome" logic of treating a witness' prior consistent statements as hearsay at all (because the declarant is present in court and subject to cross-examination), the Advisory Committee decided to treat those consistent statements, once the preconditions of the Rule were satisfied, as nonhearsay and admissible as substantive evidence, not just to rebut an attack on the witness' credibility. See Advisory Committee's Notes on Fed. Rule Evid. 801(d)(1), 28 U. S. C. App., p. 773. A consistent statement meeting the requirements of the Rule is thus placed in the same category as a declarant's inconsistent statement made under oath in another proceeding, or prior identification testimony, or admissions by a party opponent. See Fed. Rule Evid. 801.

The Rules do not accord this weighty, nonhearsay status to all prior consistent statements. To the contrary, admissibility under the Rules is confined to those statements offered to rebut a charge of "recent fabrication or improper influence or motive," the same phrase used by the Advisory Committee in its description of the "traditiona[l]" common law of evidence, which was the background against which the Rules were drafted. See Advisory Committee's Notes, *supra*, at 773. Prior consistent statements may not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited. In the present context, the question is whether A. T.'s out-of-court statements rebutted the alleged link between her desire to be with her mother and her testimony, not whether they suggested that A. T.'s in-court testimony was true. The Rule

speaks of a party rebutting an alleged motive, not bolstering the veracity of the story told.

This limitation is instructive, not only to establish the preconditions of admissibility but also to reinforce the significance of the requirement that the consistent statements must have been made before the alleged influence, or motive to fabricate, arose. That is to say, the forms of impeachment within the Rule's coverage are the ones in which the temporal requirement makes the most sense. Impeachment by charging that the testimony is a recent fabrication or results from an improper influence or motive is, as a general matter, capable of direct and forceful refutation through introduction of out-of-court consistent statements that predate the alleged fabrication, influence, or motive. A consistent statement that predates the motive is a square rebuttal of the charge that the testimony was contrived as a consequence of that motive. By contrast, prior consistent statements carry little rebuttal force when most other types of impeachment are involved. McCormick § 49, p. 105 ("When the attack takes the form of impeachment of character, by showing misconduct, convictions or bad reputation, it is generally agreed that there is no color for sustaining by consistent statements. The defense does not meet the assault" (footnote omitted)); see also 4 Wigmore § 1131, p. 293 ("The broad rule obtains in a few courts that consistent statements may be admitted *after* impeachment of any sort—in particular after any impeachment by *cross-examination.* But there is no reason for such a loose rule" (footnote omitted)).

There may arise instances when out-of-court statements that postdate the alleged fabrication have some probative force in rebutting a charge of fabrication or improper influence or motive, but those statements refute the charged fabrication in a less direct and forceful way. Evidence that a witness made consistent statements after the alleged motive to fabricate arose may suggest in some degree that the in-court testimony is truthful, and thus suggest in some degree

that that testimony did not result from some improper influence; but if the drafters of Rule 801(d)(1)(B) intended to countenance rebuttal along that indirect inferential chain, the purpose of confining the types of impeachment that open the door to rebuttal by introducing consistent statements becomes unclear. If consistent statements are admissible without reference to the timeframe we find imbedded in the Rule, there appears no sound reason not to admit consistent statements to rebut other forms of impeachment as well. Whatever objections can be leveled against limiting the Rule to this designated form of impeachment and confining the rebuttal to those statements made before the fabrication or improper influence or motive arose, it is clear to us that the drafters of Rule 801(d)(1)(B) were relying upon the common-law temporal requirement.

The underlying theory of the Government's position is that an out-of-court consistent statement, whenever it was made, tends to bolster the testimony of a witness and so tends also to rebut an express or implied charge that the testimony has been the product of an improper influence. Congress could have adopted that rule with ease, providing, for instance, that "a witness' prior consistent statements are admissible whenever relevant to assess the witness' truthfulness or accuracy." The theory would be that, in a broad sense, any prior statement by a witness concerning the disputed issues at trial would have some relevance in assessing the accuracy or truthfulness of the witness' in-court testimony on the same subject. The narrow Rule enacted by Congress, however, cannot be understood to incorporate the Government's theory.

Our analysis is strengthened by the observation that the somewhat peculiar language of the Rule bears close similarity to the language used in many of the common-law cases that describe the premotive requirement. "Rule 801(d)(1)(B) employs the precise language—'rebut[ting] . . . charge[s] . . . of recent fabrication or improper influence or motive'—

consistently used in the panoply of pre-1975 decisions." Ohlbaum, The Hobgoblin of the Federal Rules of Evidence: An Analysis of Rule 801(d)(1)(B), Prior Consistent Statements and a New Proposal, 1987 B. Y. U. L. Rev. 231, 245. See, *e. g.*, *Ellicott* v. *Pearl*, 10 Pet., at 439; *Hanger* v. *United States*, 398 F. 2d 91, 104 (CA8 1968); *People* v. *Singer*, 300 N. Y. 120, 89 N. E. 2d 710 (1949).

The language of the Rule, in its concentration on rebutting charges of recent fabrication or improper influence or motive to the exclusion of other forms of impeachment, as well as in its use of wording that follows the language of the common-law cases, suggests that it was intended to carry over the common-law premotive rule.

B

Our conclusion that Rule 801(d)(1)(B) embodies the common-law premotive requirement is confirmed by an examination of the Advisory Committee's Notes to the Federal Rules of Evidence. We have relied on those well-considered Notes as a useful guide in ascertaining the meaning of the Rules. See, *e. g.*, *Huddleston* v. *United States*, 485 U. S. 681, 688 (1988); *United States* v. *Owens*, 484 U. S. 554, 562 (1988). Where, as with Rule 801(d)(1)(B), "Congress did not amend the Advisory Committee's draft in any way . . . the Committee's commentary is particularly relevant in determining the meaning of the document Congress enacted." *Beech Aircraft Corp.* v. *Rainey*, 488 U. S. 153, 165–166, n. 9 (1988). The Notes are also a respected source of scholarly commentary. Professor Cleary was a distinguished commentator on the law of evidence, and he and members of the Committee consulted and considered the views, criticisms, and suggestions of the academic community in preparing the Notes.

The Notes disclose a purpose to adhere to the common law in the application of evidentiary principles, absent express provisions to the contrary. Where the Rules did depart from their common-law antecedents, in general the Commit-

tee said so. See, *e. g.*, Notes on Rule 804(b)(4), 28 U. S. C. App., p. 790 ("The general common law requirement that a declaration in this area must have been made *ante litem motam* has been dropped, as bearing more appropriately on weight than admissibility"); Rule 804(b)(2), *id.*, at 789 ("The exception is the familiar dying declaration of the common law, expanded somewhat beyond its traditionally narrow limits"); Rule 804(b)(3), *ibid.* ("The exception discards the common law limitation and expands to the full logical limit"). The Notes give no indication, however, that Rule 801(d)(1)(B) abandoned the premotive requirement. The entire discussion of Rule 801(d)(1)(B) is limited to the following comment:

> "Prior consistent statements traditionally have been admissible to rebut charges of recent fabrication or improper influence or motive but not as substantive evidence. Under the rule they are substantive evidence. The prior statement is consistent with the testimony given on the stand, and, if the opposite party wishes to open the door for its admission in evidence, no sound reason is apparent why it should not be received generally." Notes on Rule 801(d)(1)(B), *id.*, at 773.

Throughout their discussion of the Rules, the Advisory Committee's Notes rely on Wigmore and McCormick as authority for the common-law approach. In light of the categorical manner in which those authors state the premotive requirement, see *supra*, at 156, it is difficult to imagine that the drafters, who noted the new substantive use of prior consistent statements, would have remained silent if they intended to modify the premotive requirement. As we observed with respect to another provision of the Rules, "[w]ith this state of unanimity confronting the drafters of the Federal Rules of Evidence, we think it unlikely that they intended to scuttle entirely [the common-law requirement]." *United States* v. *Abel*, 469 U. S. 45, 50 (1984). Here, we do not think the drafters of the Rule intended to scuttle the

whole premotive requirement and rationale without so much as a whisper of explanation.

Observing that Edward Cleary was the Reporter of the Advisory Committee that drafted the Rules, the Court has relied upon his writings as persuasive authority on the meaning of the Rules. See *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993); *Abel*, *supra*, at 51–52. Cleary also was responsible for the 1972 revision of McCormick's treatise, which included an examination of the changes introduced by the proposed federal rules to the common-law practice of impeachment and rehabilitation. The discussion, which occurs only three paragraphs after the treatise's categorical description of the common-law premotive rule, also lacks any indication that the proposed rules were abandoning that temporal limitation. See McCormick § 50, p. 107.

Our conclusion is bolstered by the Advisory Committee's stated "unwillingness to countenance the general use of prior prepared statements as substantive evidence." See Notes on Rule 801(d)(1), 28 U. S. C. App., p. 773. Rule 801(d), which "enumerates three situations in which the statement is excepted from the category of hearsay," *ibid.*, was expressly contrasted by the Committee with Uniform Rule of Evidence 63(1) (1953), "which allows *any* out-of-court statement of a declarant who is present at the trial and available for cross-examination." Notes on Rule 801(d)(1), *supra*, at 773 (emphasis added). When a witness presents important testimony damaging to a party, the party will often counter with at least an implicit charge that the witness has been under some influence or motive to fabricate. If Rule 801 were read so that the charge opened the floodgates to any prior consistent statement that satisfied Rule 403, as the Tenth Circuit concluded, the distinction between rejected Uniform Rule 63(1) and Rule 801(d)(1)(B) would all but disappear.

That Rule 801(d)(1)(B) permits prior consistent statements to be used for substantive purposes after the statements are admitted to rebut the existence of an improper influence or

motive makes it all the more important to observe the preconditions for admitting the evidence in the first place. The position taken by the Rules reflects a compromise between the views expressed by the "bulk of the case law . . . against allowing prior statements of witnesses to be used generally as substantive evidence" and the views of the majority of "writers . . . [who] ha[d] taken the opposite position." *Ibid.* That compromise was one that the Committee candidly admitted was a "judgment . . . more of experience than of logic." *Ibid.*

"A party contending that legislative action changed settled law has the burden of showing that the legislature intended such a change." *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 521 (1989) (applying that presumption in interpreting Federal Rule of Evidence 609). Nothing in the Advisory Committee's Notes suggests that it intended to alter the common-law premotive requirement.

C

The Government's final argument in favor of affirmance is that the common-law premotive rule advocated by petitioner is inconsistent with the Federal Rules' liberal approach to relevancy and with strong academic criticism, beginning in the 1940's, directed at the exclusion of out-of-court statements made by a declarant who is present in court and subject to cross-examination. This argument misconceives the design of the Rules' hearsay provisions.

Hearsay evidence is often relevant. "The only way in which the probative force of hearsay differs from the probative force of other testimony is in the absence of oath, demeanor, and cross-examination as aids in determining credibility." Advisory Committee's Introduction to Article VIII, 28 U. S. C. App., p. 771. That does not resolve the matter, however. Relevance is not the sole criterion of admissibility. Otherwise, it would be difficult to account for the Rules' general proscription of hearsay testimony (absent a specific

exception), see Fed. Rule Evid. 802, let alone the traditional analysis of hearsay that the Rules, for the most part, reflect. *Ibid.* ("The approach to hearsay in these rules is that of the common law. . . . The traditional hearsay exceptions are drawn upon for the exceptions . . ."). That certain out-of-court statements may be relevant does not dispose of the question whether they are admissible.

The Government's reliance on academic commentators critical of excluding out-of-court statements by a witness, see Brief for United States 40, is subject to like criticism. To be sure, certain commentators in the years preceding the adoption of the Rules had been critical of the common-law approach to hearsay, particularly its categorical exclusion of out-of-court statements offered for substantive purposes. See, *e. g.*, Weinstein, The Probative Force of Hearsay, 46 Iowa L. Rev. 331, 344–345 (1961) (gathering sources). General criticism was directed to the exclusion of a declarant's out-of-court statements where the declarant testified at trial. See, *e. g.*, *id.*, at 333 ("[T]reating the out of court statement of the witness himself as hearsay" is a "practical absurdity in many instances"); Morgan, Hearsay Dangers and the Application of the Hearsay Concept, 62 Harv. L. Rev. 177, 192–196 (1948). As an alternative, they suggested moving away from the categorical exclusion of hearsay and toward a case-by-case balancing of the probative value of particular statements against their likely prejudicial effect. See Weinstein, *supra*, at 338; Ladd, The Relationship of the Principles of Exclusionary Rules of Evidence to the Problem of Proof, 18 Minn. L. Rev. 506 (1934). The Advisory Committee, however, was explicit in rejecting this balancing approach to hearsay:

> "The Advisory Committee has rejected this approach to hearsay as involving too great a measure of judicial discretion, minimizing the predictability of rulings, [and] enhancing the difficulties of preparation for trial." Advisory Committee's Introduction, *supra*, at 771.

Given the Advisory Committee's rejection of both the general balancing approach to hearsay and of Uniform Rule 63(1), see *supra*, at 162, the Government's reliance on the views of those who advocated these positions is misplaced.

The statement-by-statement balancing approach advocated by the Government and adopted by the Tenth Circuit creates the precise dangers the Advisory Committee noted and sought to avoid: It involves considerable judicial discretion; it reduces predictability; and it enhances the difficulties of trial preparation because parties will have difficulty knowing in advance whether or not particular out-of-court statements will be admitted. See Advisory Committee's Introduction, *supra,* at 771.

D

The case before us illustrates some of the important considerations supporting the Rule as we interpret it, especially in criminal cases. If the Rule were to permit the introduction of prior statements as substantive evidence to rebut every implicit charge that a witness' in-court testimony results from recent fabrication or improper influence or motive, the whole emphasis of the trial could shift to the out-of-court statements, not the in-court ones. The present case illustrates the point. In response to a rather weak charge that A. T.'s testimony was a fabrication created so the child could remain with her mother, the Government was permitted to present a parade of sympathetic and credible witnesses who did no more than recount A. T.'s detailed out-of-court statements to them. Although those statements might have been probative on the question whether the alleged conduct had occurred, they shed but minimal light on whether A. T. had the charged motive to fabricate. At closing argument before the jury, the Government placed great reliance on the prior statements for substantive purposes but did not once seek to use them to rebut the impact of the alleged motive.

We are aware that in some cases it may be difficult to ascertain when a particular fabrication, influence, or motive

arose. Yet, as the Government concedes, a majority of common-law courts were performing this task for well over a century, see Brief for United States 39, and the Government has presented us with no evidence that those courts, or the judicial circuits that adhere to the rule today, have been unable to make the determination. Even under the Government's hypothesis, moreover, the thing to be rebutted must be identified, so the date of its origin cannot be that much more difficult to ascertain. By contrast, as the Advisory Committee commented, see *supra*, at 164, the Government's approach, which would require the trial court to weigh all of the circumstances surrounding a statement that suggest its probativeness against the court's assessment of the strength of the alleged motive, would entail more of a burden, with no guidance to attorneys in preparing a case or to appellate courts in reviewing a judgment.

III

Courts must be sensitive to the difficulties attendant upon the prosecution of alleged child abusers. In almost all cases a youth is the prosecution's only eyewitness. But "[t]his Court cannot alter evidentiary rules merely because litigants might prefer different rules in a particular class of cases." *United States* v. *Salerno*, 505 U. S. 317, 322 (1992). When a party seeks to introduce out-of-court statements that contain strong circumstantial indicia of reliability, that are highly probative on the material questions at trial, and that are better than other evidence otherwise available, there is no need to distort the requirements of Rule 801(d)(1)(B). If its requirements are met, Rule 803(24) exists for that eventuality. We intimate no view, however, concerning the admissibility of any of A. T.'s out-of-court statements under that section, or any other evidentiary principle. These matters, and others, are for the Court of Appeals to decide in the first instance.

Our holding is confined to the requirements for admission under Rule 801(d)(1)(B). The Rule permits the introduction of a declarant's consistent out-of-court statements to rebut a charge of recent fabrication or improper influence or motive only when those statements were made before the charged recent fabrication or improper influence or motive. These conditions of admissibility were not established here.

The judgment of the Court of Appeals for the Tenth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring in part and concurring in the judgment.

I concur in the judgment of the Court, and join its opinion except for Part II–B. That Part, which is devoted entirely to a discussion of the Advisory Committee's Notes pertinent to Rule 801(d)(1)(B), gives effect to those Notes not only because they are "a respected source of scholarly commentary," *ante*, at 160, but also because they display the "purpose," *ibid.*, or "inten[t]," *ante*, at 161, of the draftsmen.

I have previously acquiesced in, see, *e. g.*, *Beech Aircraft Corp.* v. *Rainey*, 488 U. S. 153 (1988), and indeed myself engaged in, see *United States* v. *Owens*, 484 U. S. 554, 562 (1988), similar use of the Advisory Committee Notes. More mature consideration has persuaded me that is wrong. Having been prepared by a body of experts, the Notes are assuredly persuasive scholarly commentaries—ordinarily *the* most persuasive—concerning the meaning of the Rules. But they bear no special authoritativeness as the work of the draftsmen, any more than the views of Alexander Hamilton (a draftsman) bear more authority than the views of Thomas Jefferson (not a draftsman) with regard to the meaning of the Constitution. It is the words of the Rules that have been authoritatively adopted—by this Court, or by Congress if it makes a statutory change. See 28 U. S. C.

§§ 2072, 2074 (1988 ed. and Supp. IV). In my view even the adopting Justices' thoughts, unpromulgated as Rules, have no authoritative (as opposed to persuasive) effect, any more than their thoughts regarding an opinion (reflected in exchanges of memoranda before the opinion issues) authoritatively demonstrate the meaning of that opinion. And the same for the thoughts of congressional draftsmen who prepare statutory amendments to the Rules. Like a judicial opinion and like a statute, the promulgated Rule says what it says, regardless of the intent of its drafters. The Notes are, to be sure, submitted to us and to the Members of Congress as the thoughts of the body initiating the recommendations, see § 2073(d); but there is no certainty that either we or they read those thoughts, nor is there any procedure by which we formally endorse or disclaim them. That being so, the Notes cannot, by some power inherent in the draftsmen, change the meaning that the Rules would otherwise bear.

In the present case, the merely persuasive force of the Advisory Committee Notes suffices. Indeed, in my view the case can be adequately resolved without resort to the Advisory Committee at all. It is well established that "'"the body of common law knowledge"'" must be "'"a source of guidance"'" in our interpretation of the Rules. *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579, 588 (1993) (quoting *United States* v. *Abel*, 469 U. S. 45, 52 (1984) (quoting Cleary, Preliminary Notes on Reading the Rules of Evidence, 57 Neb. L. Rev. 908, 915 (1978))). Rule 801(d)(1)(B) uses language that tracks common-law cases and prescribes a result that makes no sense except on the assumption that that language indeed adopts the common-law rule. As the Court's opinion points out, only the premotive-statement limitation makes it rational to admit a prior corroborating statement to rebut a charge of recent fabrication or improper motive, but not to rebut a charge that the witness' memory is playing tricks.

JUSTICE BREYER, with whom THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE THOMAS join, dissenting.

The basic issue in this case concerns not hearsay, but relevance. As the majority points out, the common law permitted a lawyer to rehabilitate a witness (after a charge of improper motive) by pointing to the fact that the witness had said the same thing earlier—but only if the witness made the earlier statement *before* the motive to lie arose. The reason for the time limitation was that, otherwise, the prior consistent statement had no *relevance* to rebut the charge that the in-court testimony was the product of the motive to lie. The treatises, discussing the matter under the general heading of "impeachment and support" (McCormick) or "relevancy" (Wigmore), and not "hearsay," make this clear, stating, for example, that a

> "'prior consistent statement has no relevancy to refute [a] charge [of recent fabrication, etc.,] unless the consistent statement was made before the source of the bias, interest, influence or incapacity originated.'" *Ante*, at 156 (quoting E. Cleary, McCormick on Evidence § 49, p. 105 (2d ed. 1972) (hereinafter McCormick)).

The majority believes that a hearsay-related rule, Federal Rule of Evidence 801(d)(1)(B), codifies this absolute timing requirement. I do not. Rule 801(d)(1)(B) has nothing to do with relevance. Rather, that Rule carves out a subset of prior consistent statements that were formerly admissible only to rehabilitate a witness (a nonhearsay use that relies upon the fact that the statement was made). It then says that members of that subset are "not hearsay." This means that, *if* such a statement is admissible for a particular rehabilitative purpose (to rebut a charge of recent fabrication or improper influence or motive), its proponent now may use it substantively, for a hearsay purpose (*i. e.*, as evidence of its truth), as well.

The majority is correct in saying that there are different kinds of categories of prior consistent statements that can rehabilitate a witness in different ways, including statements (a) placing a claimed inconsistent statement in context; (b) showing that an inconsistent statement was not made; (c) indicating that the witness' memory is not as faulty as a cross-examiner has claimed; and (d) showing that the witness did not recently fabricate his testimony as a result of an improper influence or motive. See *United States* v. *Rubin*, 609 F. 2d 51, 68 (CA2 1979) (Friendly, J., concurring). But, I do not see where, in the existence of several categories, the majority can find the premise, which it seems to think is important, that the reason the drafters singled out one category (category (d)) was that category's special probative force in respect to rehabilitating a witness. Nor, in any event, do I understand how that premise can help the majority reach its conclusion about the common-law timing rule.

I doubt the premise because, as McCormick points out, other categories of prior consistent statements (used for rehabilitation) also, on occasion, seem likely to have strong probative force. What, for example, about such statements introduced to rebut a charge of faulty memory (category (c) above)? McCormick says about such statements: "If the witness's accuracy of memory is challenged, it seems *clear common sense* that a consistent statement made shortly after the event and before he had time to forget, should be received in support." McCormick § 49, at 105, n. 88 (emphasis added). Would not such statements (received in evidence to rehabilitate) often turn out to be highly probative as well?

More important, the majority's conclusion about timing seems not to follow from its "especially probative force" premise. That is because probative force has little to do with the concerns underlying hearsay law. Hearsay law basically turns on an out-of-court declarant's reliability, as tested through cross-examination; it does not normally turn

on the probative force (if true) of that declarant's statement. The "timing" circumstance (the fact that a prior consistent statement was made after a motive to lie arose) may diminish probative force, but it does not diminish reliability. Thus, from a hearsay perspective, the timing of a prior consistent statement is basically beside the point.

At the same time, one can find a *hearsay*-related reason why the drafters might have decided to restrict the Rule to a particular category of prior consistent statements. Juries have trouble distinguishing between the rehabilitative and substantive use of the kind of prior consistent statements listed in Rule 801(d)(1)(B). Judges may give instructions limiting the use of such prior consistent statements to a rehabilitative purpose, but, in practice, juries nonetheless tend to consider them for their substantive value. See 4 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 801(d)(1)(B)[01], p. 801–188 (1994) ("[A]s a practical matter, the jury in all probability would misunderstand or ignore a limiting instruction [with respect to the class of prior consistent statements covered by the Rule] anyway, so there is no good reason for giving one"). It is possible that the Advisory Committee made them "nonhearsay" for that reason, *i. e.*, as a concession "more of experience than of logic." Advisory Committee's Notes on Fed. Rule Evid. 801(d)(1)(B), 28 U. S. C. App., p. 773 (also noting that the witness is available for cross-examination in the courtroom in any event). If there was a reason why the drafters excluded from Rule 801(d)(1)(B)'s scope other kinds of prior consistent statements (used for rehabilitation), perhaps it was that the drafters concluded that those other statements caused jury confusion to a lesser degree. On this rationale, however, there is no basis for distinguishing between *pre*motive and *post*-motive statements, for the confusion with respect to each would very likely be the same.

In sum, because the Rule addresses a hearsay problem and one can find a reason, unrelated to the premotive rule, for

why it does so, I would read the Rule's plain words to mean exactly what they say: If a trial court properly admits a statement that is "consistent with the declarant's testimony" for the purpose of "rebut[ting] an express or implied charge . . . of recent fabrication or improper influence or motive," then that statement is "not hearsay," and the jury may also consider it for the truth of what it says.

Assuming Rule 801(d)(1)(B) does not codify the absolute timing requirement, I must still answer the question whether, as a *relevance* matter, the common-law statement of the premotive rule stands as an absolute bar to a trial court's admission of a postmotive prior consistent statement for the purpose of rebutting a charge of recent fabrication or improper influence or motive. The majority points to statements of the timing rule that do suggest that, for reasons of relevance, the law of evidence *never* permits their admission. *Ante*, at 156. Yet, absolute-sounding rules often allow exceptions. And, there are sound reasons here for permitting an exception to the timing rule where circumstances warrant.

For one thing, one can find examples where the timing rule's claim of "no relevancy" is simply untrue. A postmotive statement *is* relevant to rebut, for example, a charge of recent fabrication based on improper motive, say, when the speaker made the prior statement while affected by a far more powerful motive to tell the truth. A speaker might be moved to lie to help an acquaintance. But, suppose the circumstances *also* make clear to the speaker that only the truth will save his child's life. Or, suppose the postmotive statement was made spontaneously, or when the speaker's motive to lie was much weaker than it was at trial. In these and similar situations, special circumstances may indicate that the prior statement was made for some reason other than the alleged improper motivation; it may have been made not *because of*, but *despite*, the improper motivation. Hence, postmotive statements can, *in appropriate circumstances*, directly refute the charge of fabrication based on

improper motive, not because they bolster in a general way the witness' trial testimony, see *ante*, at 159, but because the circumstances indicate that the statements are not causally connected to the alleged motive to lie.

For another thing, the common-law premotive rule was not as uniform as the majority suggests. Cf. *United States* v. *Abel*, 469 U. S. 45, 50 (1984) (stating that where the common law was *unanimous*, the drafters of the Federal Rules likely intended to preserve it). A minority of courts recognized that postmotive statements could be relevant to rebut a charge of recent fabrication or improper influence or motive under the right circumstances. See, *e. g.*, *United States* v. *Gandy*, 469 F. 2d 1134, 1135 (CA5 1972); *Copes* v. *United States*, 345 F. 2d 723, 726 (CADC 1964); *State* v. *George*, 30 N. C. 324, 328 (1848). I concede that the majority of courts took the rule of thumb as absolute. But, I have searched the cases (and the commentators) in vain for an explanation of why that should be so. See, *e. g.*, McCormick § 49, at 105, and n. 88 (citing cases).

One can imagine a possible explanation: Trial judges may find it easier to administer an absolute rule. Yet, there is no indication in any of the cases that trial judges would, or do, find it particularly difficult to administer a more flexible rule in this context. And, there is something to be said for the greater authority that flexibility grants the trial judge to tie rulings on the admissibility of rehabilitative evidence more closely to the needs and circumstances of the particular case. 1 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 401[01], pp. 401–8 to 401–9 (1994) ("A flexible approach . . . is more apt to yield a sensible result than the application of a mechanical rule"). Furthermore, the majority concedes that the premotive rule, while seemingly bright line, poses its own administrative difficulties. *Ante*, at 165–166.

This Court has acknowledged that the Federal Rules of Evidence worked a change in common-law relevancy rules in the direction of flexibility. See *Daubert* v. *Merrell Dow*

Pharmaceuticals, Inc., 509 U. S. 579 (1993). Article IV of the Federal Rules, which concerns relevance, liberalizes the rules for admission of relevant evidence. See *id.*, at 587. The Rules direct the trial judge generally to admit all evidence having "any tendency" to make the existence of a material fact "more probable or less probable than it would be without the evidence." Fed. Rules Evid. 401, 402. The judge may reject the evidence (assuming compliance with other rules) only if the probative value of the evidence is substantially outweighed by its tendency to prejudice a party or delay a trial. Rule 403. The codification, as a general matter, relies upon the trial judge's administration of Rules 401, 402, and 403 to keep the barely relevant, the time wasting, and the prejudicial from the jury. See, *e. g.*, *Abel*, *supra*, at 54 ("A district court is accorded a wide discretion in . . . [a]ssessing the probative value of [proffered evidence], and weighing any factors counseling against admissibility"); 1 Weinstein's Evidence, *supra*, ¶ 401[01] (discussing broad discretion accorded trial judge); 22 C. Wright & K. Graham, Federal Practice and Procedure § 5162 (1978 and 1994 Supp.).

In *Daubert*, this Court considered the rule of *Frye* v. *United States*, 293 F. 1013 (CADC 1923), which had excluded scientific evidence that had not gained general acceptance in the relevant field. 509 U. S., at 585–586. Like the premotive rule here at issue, the *Frye* rule was "rigid," setting forth an "absolute prerequisite to admissibility," which the Court said was "at odds with the 'liberal thrust' of the Federal Rules." *Id.*, at 588. *Daubert* suggests that the liberalized relevancy provisions of the Federal Rules can supersede a pre-existing rule of relevance, at least where no compelling practical or logical support can be found for the pre-existing rule. It is difficult to find any strong practical or logical considerations for making the premotive rule an absolute condition of admissibility here. Perhaps there are other circumstances in which categorical common-law rules serve the purposes of Rules 401, 402, and 403, and should, accordingly,

remain absolute in the law. But, for the reasons stated above, this case, like *Daubert*, does not present such a circumstance. Thus, considered purely as a matter of relevancy law (and as though Rule 801(d)(1)(B) had not been written), I would conclude that the premotive rule did not survive the adoption of the Rules.

Irrespective of these arguments, one might claim that, nonetheless, the drafters, in writing Rule 801(d)(1)(B), relied on the continued existence of the common-law relevancy rule, and that Rule 801(d)(1)(B) therefore reflects a belief that the common-law relevancy rule would survive. But, I would reject that argument. For one thing, if the drafters had wanted to insulate the common-law rule from the Rules' liberalizing effect, this would have been a remarkably indirect (and therefore odd) way of doing so—both because Rule 801(d)(1)(B) is utterly silent about the premotive rule and because Rule 801(d)(1)(B) is a rule of hearsay, not relevancy. For another thing, there is an equally plausible reason why the drafters might have wanted to write Rule 801(d)(1)(B) the way they did—namely, to allow substantive use of a particular category of prior consistent statements that, when admitted as rehabilitative evidence, was especially impervious to a limiting instruction. See *supra*, at 171.

Accordingly, I would hold that the Federal Rules authorize a district court to allow (where probative in respect to rehabilitation) the use of postmotive prior consistent statements to rebut a charge of recent fabrication or improper influence or motive (subject of course to, for example, Rule 403). Where such statements are admissible for this rehabilitative purpose, Rule 801(d)(1)(B), as stated above, makes them admissible as substantive evidence as well (provided, of course, that the Rule's other requirements, such as the witness' availability for cross-examination, are satisfied). In most cases, this approach will not yield a different result from a strict adherence to the premotive rule for, in most cases, postmotive statements will not be significantly probative.

And, even in cases where the statement is admitted as significantly probative (in respect to rehabilitation), the effect of admission on the trial will be minimal because the prior consistent statements will (by their nature) do no more than repeat in-court testimony.

In this case, the Court of Appeals, applying an approach consistent with what I have described above, decided that A. T.'s prior consistent statements were probative on the question of whether her story as a witness reflected a motive to lie. There is no reason to reevaluate this factbound conclusion. Accordingly, I would affirm the judgment of the Court of Appeals.

ILLINOIS *v.* KENTUCKY

ON BILL OF COMPLAINT

No. 106, Orig. Decided May 28, 1991—Decree entered January 17, 1995

Decree entered.

Opinion reported: 500 U. S. 380.

The motion of the Special Master for compensation and reimbursement of expenses is granted and the Special Master is awarded a total of $114,708.16 to be paid equally by the parties.

The Report of the Special Master is received and ordered filed. The Report is adopted. The Special Master is hereby discharged.

DECREE

It is ordered, adjudged, and decreed that:

1. The boundary line between the State of Illinois and the Commonwealth of Kentucky is fixed as geodetically described in Joint Exhibits 3 through 26 to the Special Master's Report filed with this Court on December 2, 1994. Joint Exhibits 3 through 26 are incorporated by reference herein.

2. Copies of this Decree and the Special Master's Report (including Joint Exhibits 3 through 26) shall be filed with the Clerk of this Court, the Secretary of State of the State of Illinois, and the Secretary of State of the Commonwealth of Kentucky.

3. Copies of this Decree and the Special Master's Report (including Joint Exhibits 3 through 26, and paper prints of Joint Exhibits 3 through 26, once they become available) shall be filed with the County Clerk's Office in Illinois and with the County Clerk's Office in the Commonwealth of Kentucky in each of the following counties:

In Illinois, the counties of Gallatin, Hardin, Pope, Massac, Pulaski, and Alexander, and

In Kentucky, the counties of Union, Crittenden, Livingston, McCracken, and Ballard.

4. The State of Illinois and the Commonwealth of Kentucky each have concurrent jurisdiction over the Ohio River.

5. The costs of this proceeding shall be divided between the parties, as recommended by the Special Master.

Syllabus

ASGROW SEED CO. *v.* WINTERBOER ET AL., DBA DEEBEES

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

No. 92–2038. Argued November 7, 1994—Decided January 18, 1995

Petitioner Asgrow Seed Company has protected two varieties of soybean seed under the Plant Variety Protection Act of 1970 (PVPA), which extends patent-like protection to novel varieties of sexually reproduced plants (plants grown from seed). After respondent farmers planted 265 acres of Asgrow's seed and sold the entire salable crop—enough to plant 10,000 acres—to other farmers for use as seed, Asgrow filed suit, alleging infringement under, *inter alia,* 7 U. S. C. § 2541(1), for selling or offering to sell the seed, and § 2541(3), for "sexually multiply[ing] the novel varieties as a step in marketing [them] (for growing purposes)." Respondents contended that they were entitled to a statutory exemption from liability under § 2543, which provides in relevant part that "[e]xcept to the extent that such action may constitute an infringement under [§ 2541(3)]," a farmer may "save seed . . . and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided,* That" such saved seed can be sold for reproductive purposes where both buyer and seller are farmers "whose primary farming occupation is the growing of crops for sale for other than reproductive purposes." In granting Asgrow summary judgment, the District Court found that the exemption allows a farmer to save and resell to other farmers only the amount of seed the seller would need to replant his own fields. The Court of Appeals reversed, holding that § 2543 permits a farmer to sell up to half of every crop he produces from PVPA-protected seed, so long as he sells the other half for food or feed.

Held: A farmer who meets the requirements set forth in § 2543's proviso may sell for reproductive purposes only such seed as he has saved for the purpose of replanting his own acreage. Pp. 185–193.

(a) Respondents were not eligible for the § 2543 exemption if their planting and harvesting were conducted "as a step in marketing" under § 2541(3), for the parties do not dispute that these actions constituted "sexual multiplication" of novel varieties. Since the PVPA does not define "marketing," the term should be given its ordinary meaning. Marketing ordinarily refers to the act of holding forth property for sale, together with the activities preparatory thereto, but does not require

Syllabus

that there be extensive promotional or merchandising activities connected with the selling. Pp. 185–188.

(b) By reason of the proviso, the first sentence of § 2543 allows seed that has been preserved for reproductive purposes (saved seed) to be sold for such purposes. However, the structure of the sentence is such that this authorization does not extend to saved seed that was grown for the purpose of sale (marketing) for replanting, because that would violate § 2541(3). As a practical matter, this means that only seed that has been saved by the farmer to replant his own acreage can be sold. Thus, a farmer who saves seeds to replant his acreage, but changes his plans, may sell the seeds for replanting under the proviso's terms. The statute's language stands in the way of the limitation the Court of Appeals found in the amount of seed that can be sold. Pp. 188–192.

982 F. 2d 486, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 193.

Richard L. Stanley argued the cause for petitioner. With him on the briefs were *John F. Lynch*, *Bruce Stein*, *Lawrence C. Maxwell*, and *Mary Ellen Morris.*

Richard H. Seamon argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, *Barbara C. Biddle*, and *Wendy M. Keats.*

William H. Bode argued the cause for respondents. With him on the brief was *Luis M. Acosta.**

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*Briefs of *amici curiae* urging reversal were filed for the American Intellectual Property Law Association by *J. Michael Jakes;* and for the American Seed Trade Association by *Gary Jay Kushner*, *John G. Roberts, Jr.*, and *David G. Leitch.*

Mary Helen Sears filed a brief for Ted Cook as *amicus curiae* urging affirmance.

Briefs of *amici curiae* were filed for the Rural Advancement Foundation International et al. by *David Charles Masselli;* and for James G. McDonald by *Stephen Gordon.*

JUSTICE SCALIA delivered the opinion of the Court.

The Plant Variety Protection Act of 1970, 7 U. S. C. § 2321 *et seq.*, protects owners of novel seed varieties against unauthorized sales of their seed for replanting purposes. An exemption, however, allows farmers to make some sales of protected variety seed to other farmers. This case raises the question whether there is a limit to the quantity of protected seed that a farmer can sell under this exemption.

I

In 1970, Congress passed the Plant Variety Protection Act (PVPA), 84 Stat. 1542, 7 U. S. C. § 2321 *et seq.*, in order to provide developers of novel plant varieties with "adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties," § 2581. The PVPA extends patent-like protection to novel varieties of sexually reproduced plants (that is, plants grown from seed) which parallels the protection afforded asexually reproduced plant varieties (that is, varieties reproduced by propagation or grafting) under Chapter 15 of the Patent Act. See 35 U. S. C. §§ 161–164.

The developer of a novel variety obtains PVPA coverage by acquiring a certificate of protection from the Plant Variety Protection Office. See 7 U. S. C. §§ 2421, 2422, 2481–2483. This confers on the owner the exclusive right for 18 years to "exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom." § 2483.

Petitioner, Asgrow Seed Company, is the holder of PVPA certificates protecting two novel varieties of soybean seed, which it calls A1937 and A2234. Respondents, Dennis and Becky Winterboer, are Iowa farmers whose farm spans 800 acres of Clay County, in the northwest corner of the

State. The Winterboers have incorporated under the name "D-Double-U Corporation" and do business under the name "DeeBee's Feed and Seed." In addition to growing crops for sale as food and livestock feed, since 1987 the Winterboers have derived a sizable portion of their income from "brown-bag" sales of their crops to other farmers to use as seed. A brown-bag sale occurs when a farmer purchases seed from a seed company, such as Asgrow, plants the seed in his own fields, harvests the crop, cleans it, and then sells the reproduced seed to other farmers (usually in nondescript brown bags) for them to plant as crop seed on their own farms. During 1990, the Winterboers planted 265 acres of A1937 and A2234, and sold the entire salable crop, 10,529 bushels, to others for use as seed—enough to plant 10,000 acres. The average sale price was $8.70 per bushel, compared with a then-current price of $16.20 to $16.80 per bushel to obtain varieties A1937 and A2234 directly from Asgrow.

Concerned that the Winterboers were making a business out of selling its protected seed, Asgrow sent a local farmer, Robert Ness, to the Winterboer farm to make a purchase. Mr. Winterboer informed Ness that he could sell him soybean seed that was "just like" Asgrow varieties A1937 and A2234. Ness purchased 20 bags of each; a plant biologist for Asgrow tested the seeds and determined that they were indeed A1937 and A2234.

Asgrow brought suit against the Winterboers in the Federal District Court for the Northern District of Iowa, seeking damages and a permanent injunction against sale of seed harvested from crops grown from A1937 and A2234. The complaint alleged infringement under 7 U. S. C. § 2541(1), for selling or offering to sell Asgrow's protected soybean varieties; under § 2541(3), for sexually multiplying Asgrow's novel varieties as a step in marketing those varieties for growing purposes; and under § 2541(6), for dispensing the novel varie-

ties to others in a form that could be propagated without providing notice that the seeds were of a protected variety.[1]

The Winterboers did not deny that Asgrow held valid certificates of protection covering A1937 and A2234, and that they had sold seed produced from those varieties for others to use as seed. Their defense, at least to the §§ 2541(1) and

[1] At the time the infringement action was filed, § 2541 provided in full:

"Except as otherwise provided in this subchapter, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 2567 of this title:

"(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

"(2) import the novel variety into, or export it from, the United States;

"(3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or

"(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

"(5) use seed which had been marked "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or progeny thereof to propagate the novel variety; or

"(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

"(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

"(8) instigate or actively induce performance of any of the foregoing acts."

In October 1992, Congress amended § 2541, designating the prior text as subsection (a) and adding a subsection (b), the provisions of which are not relevant here. Curiously, however, the references in § 2543 to the infringement provisions of § 2541 were not amended to reflect this change. For clarity's sake, therefore, we will continue to refer to the infringement provisions under their prior designations, *e. g.*, §§ 2541(1)–(8), rather than their current designations, *e. g.*, §§ 2541(a)(1)–(8).

(3) charges, rested upon the contention that their sales fell within the statutory exemption from infringement liability found in 7 U. S. C. § 2543. That section, entitled "Right to save seed; crop exemption," reads in relevant part as follows:

> "Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 2541 of this title, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided,* That without regard to the provisions of section 2541(3) of this title it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. . . ."[2]

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[2] Congress has recently amended this section by striking from the first sentence the words " 'section: *Provided,* That' and all that follows through the period and inserting 'section.' " Plant Variety Protection Act Amendments of 1994, Pub. L. 103–349, 108 Stat. 3136, 3142. That amendment has the effect of eliminating the exemption from infringement liability for farmers who sell PVPA-protected seed to other farmers for reproductive purposes. That action, however, has no bearing on the resolution of the

The Winterboers argued that this language gave them the right to sell an unlimited amount of seed produced from a protected variety, subject only to the conditions that both buyer and seller be farmers "whose primary farming occupation is the growing of crops for sale for other than reproductive purposes," and that all sales comply with state law. Asgrow maintained that the exemption allows a farmer to save and resell to other farmers only the amount of seed the seller would need to replant his own fields—a limitation that the Winterboers' sales greatly exceeded. The District Court agreed with Asgrow and granted summary judgment in its favor. 795 F. Supp. 915 (1991).

The United States Court of Appeals for the Federal Circuit reversed. 982 F. 2d 486 (1992). Although "recogniz[ing] that, without meaningful limitations, the crop exemption [of § 2543] could undercut much of the PVPA's incentives," *id.*, at 491, the Court of Appeals saw nothing in § 2543 that would limit the sale of protected seed (for reproductive purposes) to the amount necessary to plant the seller's own acreage. Rather, as the Court of Appeals read the statute, § 2543 permits a farmer to sell up to half of every crop he produces from PVPA-protected seed to another farmer for use as seed, so long as he sells the other 50 percent of the crop grown from that specific variety for nonreproductive purposes, *e. g.*, for food or feed. The Federal Circuit denied Asgrow's petition for rehearing and suggestion for rehearing en banc by a vote of six judges to five. 989 F. 2d 478 (1993). We granted certiorari. 511 U. S. 1029 (1994).

II

It may be well to acknowledge at the outset that it is quite impossible to make complete sense of the provision at issue

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present case, since the amendments affect only those certificates issued after April 4, 1995, that were not pending on or before that date. See *id.*, §§ 14(a), 15, 108 Stat. 3144, 3145.

here. One need go no further than the very first words of its title to establish that. Section 2543 does *not*, as that title claims and the ensuing text says, reserve any "[r]ight to save seed"—since nothing elsewhere in the Act remotely prohibits the saving of seed. Nor, under any possible analysis, is the proviso in the first sentence of § 2543 ("*Provided*, That") really a proviso.

With this advance warning that not all mysteries will be solved, we enter the verbal maze of § 2543. The entrance, we discover, is actually an exit, since the provision begins by excepting certain activities from its operation: "*Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 2541 of this title*, it shall not infringe any right hereunder for a person to save seed produced by him . . . and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section . . . ." (Emphasis added.) Thus, a farmer does not qualify for the exemption from infringement liability if he has

> "(3) sexually multipl[ied] the novel variety as a step in marketing (for growing purposes) the variety; or
>
> (4) use[d] the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom." 7 U. S. C. §§ 2541(3)–(4).

In 1990, the Winterboers planted 265 acres of Asgrow protected variety seed and collected a harvest of 12,037 bushels of soybeans. The parties do not dispute that this act of planting and harvesting constituted "sexual multiplication" of the novel varieties. See 7 U. S. C. § 2401(f) (defining "sexually reproduced" seed to include "any production of a variety by seed"). The Winterboers sold almost all of these beans for use as seed (*i. e.*, "for growing purposes"), without Asgrow's consent. The central question in this case, then, is whether the Winterboers' planting and harvesting were conducted "as a step in marketing" Asgrow's protected seed

varieties for growing purposes. If they were, the Winterboers were not eligible for the § 2543 exemption, and the District Court was right to grant summary judgment to Asgrow.

The PVPA does not define "marketing." When terms used in a statute are undefined, we give them their ordinary meaning. *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994). The Federal Circuit believed that the word "marketing" requires "extensive or coordinated selling activities, such as advertising, using an intervening sales representative, or similar extended merchandising or retail activities." 982 F. 2d, at 492. We disagree. Marketing ordinarily refers to the act of holding forth property for sale, together with the activities preparatory thereto (in the present case, cleaning, drying, bagging, and pricing the seeds). The word does not require that the promotional or merchandising activities connected with the selling be extensive. One can market apples by simply displaying them on a cart with a price tag; or market a stock by simply listing it on a stock exchange; or market a house (we would normally say "place it on the market") by simply setting a "for sale" sign on the front lawn. Indeed, some dictionaries give as one meaning of "market" simply "to sell." See, *e. g.*, Oxford Universal Dictionary 1208 (3d ed. 1955); Webster's New International Dictionary 1504 (2d ed. 1950). Of course, effective selling often involves extensive promotional activities, and when they occur they are all part of the "marketing." But even when the holding forth for sale relies upon no more than word-of-mouth advertising, a marketing of goods is in process. Moreover, even if the word "marketing" could, in one of its meanings, demand extensive promotion, we see no reason why the law at issue here would intend that meaning. That would have the effect of preserving PVPA protection for less valuable plant varieties, but eliminating it for varieties so desirable that they can be marketed by word of mouth; as well as the effect of requiring courts to ponder the difficult question of how much promotion is necessary to constitute marketing. We

think that when the statute refers to sexually multiplying a variety "as a step in marketing," it means growing seed of the variety for the purpose of putting the crop up for sale.[3] Under the exception set out in the first clause of § 2543, then, a farmer is not eligible for the § 2543 exemption if he plants and saves seeds for the purpose of selling the seeds that they produce for replanting.

Section 2543 next provides that, so long as a person is not violating either §§ 2541(3) or (4),

> "it shall not infringe any right hereunder for a person to *save seed* produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use *such saved seed* in the production of a crop for use on his farm, or for sale as provided in this section . . . ." (Emphasis added.)

Farmers generally grow crops to sell. A harvested soybean crop is typically removed from the farmer's premises in short order and taken to a grain elevator or processor. Sometimes, however, in the case of a plant such as the soybean, in which the crop is the seed, the farmer will have a portion of his crop cleaned and stored as seed for replanting his fields next season. We think it clear that this seed *saved for replanting* is what the provision under discussion means by

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[3] The dissent asserts that the Federal Circuit's more demanding interpretation of "marketing" is supported by the ancient doctrine disfavoring restraints on alienation of property, see *post*, at 194–195. The wellspring of that doctrine, of course, is concern for property rights, and in the context of the PVPA it is the dissent's interpretation, rather than ours, which belittles that concern. The whole purpose of the statute is to create a valuable property in the product of botanical research by giving the developer the right to "exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it," etc. 7 U. S. C. § 2483. Applying the rule disfavoring restraints on alienation to interpretation of the PVPA is rather like applying the rule disfavoring restraints upon freedom of contract to interpretation of the Sherman Act.

"saved seed"—not merely regular uncleaned crop that is stored for later market sale or use as fodder.

There are two ways to read the provision, depending upon which words the phrase "for sale as provided in this section" is taken to modify. It can be read "production of a crop . . . for sale as provided in this section"; or alternatively "use such saved seed . . . for sale as provided in this section." The parallelism created by the phrase "*for* use on his farm" followed immediately by "or *for* sale as provided in this section" suggests the former reading. But the placement of the comma, separating "use [of] such saved seed in the production of a crop for use on his farm," from "or for sale," favors the latter reading. So does the fact that the alternative reading requires the reader to skip the lengthy "*Provided*, That" clause in order to find out what sales are "provided [for] in this section"—despite the parallelism between "provided" and "*Provided*," and despite the presence of a colon, which ordinarily indicates specification of what has preceded. It is surely easier to think that at least some of the sales "provided for" are those that are "Provided" after the colon. (It is, of course, not unusual, however deplorable it may be, for "Provided, That" to be used as prologue to an addition rather than an exception. See *Springer* v. *Philippine Islands*, 277 U. S. 189, 206 (1928); 1A N. Singer, Sutherland on Statutory Construction § 20.22 (5th ed. 1992).)

We think the latter reading is also to be preferred because it lends greater meaning to all the provisions. Under the former reading ("production of a crop . . . for sale as provided in this section"), the only later text that could be referred to is the provision for "bona fide sale[s] for other than reproductive purposes" set out in the second sentence of § 2543—the so-called "crop exemption." (The proviso could *not* be referred to, since it does not provide for sale of *crops* grown from saved seed, but only for sale of saved seed itself.) But if the "or for sale" provision has such a limited referent, the opening clause's ("Except to the extent that . . .") reservation

of § 2541(3) infringement liability (*i. e.*, liability for growing as a step in marketing for reproductive purposes) would be devoid of content, since the provision to which it is attached would *permit* no sales for reproductive purposes. Under the latter reading, by contrast, the farmer may not "use [his] saved seed . . . for sale" as the proviso allows *if* the seed was intentionally grown for the purpose of such sale—*i. e.*, "sexually multipl[ied] . . . as a step in marketing (for growing purposes) the variety."[4] A second respect in which our favored reading gives greater meaning to the provision is this: The other reading ("crop . . . for sale as provided in this section") causes the "permission" given in the opening sentence to extend only to sales for nonreproductive purposes of the *crops grown* from saved seed, as opposed to sales of the saved seed itself. But no separate permission would have been required for this, since it is already contained within the crop exemption itself; it serves only as a *reminder* that crop from saved seed can be sold under that exemption—a peculiarly incomplete reminder, since the saved seed *itself* can also be sold under that exemption.

To summarize: By reason of its proviso the first sentence of § 2543 allows seed that has been preserved for reproductive purposes ("saved seed") to be sold for such purposes. The structure of the sentence is such, however, that this authorization does *not* extend to saved seed that was grown *for the very purpose* of sale ("marketing") for replanting—because in that case, § 2541(3) would be violated, and the above-

[4] This reading also gives meaning to the proviso's statement that "*without regard to* the provisions of section 2541(3) . . . it shall not infringe any right hereunder" for a person to engage in certain sales of saved seed for reproductive purposes (emphasis added). This serves to eliminate the technical argument that a production of seed that was originally in compliance with § 2541(3) (because it was not done as a step in marketing for reproductive purposes) could retroactively be rendered unlawful by the later sale permitted in the proviso, because such sale *causes* the earlier production to have been "a step in the marketing" for reproductive purposes.

discussed exception to the exemption would apply. As a practical matter, since § 2541(1) prohibits all unauthorized transfer of title to, or possession of, the protected variety, this means that the only seed that can be sold under the proviso is seed that has been saved by the farmer to replant his own acreage.[5] (We think that limitation is also apparent from the text of the crop exemption, which permits a farm crop from saved seeds to be sold—for nonreproductive purposes—only if those saved seeds were "produced by descent *on such farm.*" (Emphasis added.) It is in our view the proviso in § 2543, and not the crop exemption, that authorizes the permitted buyers of saved seeds to sell the crops they produce.) Thus, if a farmer saves seeds to replant his acreage, but for some reason changes his plans, he may instead sell those seeds for replanting under the terms set forth in the proviso (or of course sell them for nonreproductive purposes under the crop exemption).

It remains to discuss one final feature of the proviso authorizing limited sales for reproductive purposes. The proviso allows sales of saved seed for replanting purposes only between persons "whose primary farming occupation is the growing of crops for sale for other than reproductive purposes." The Federal Circuit, which rejected the proposition

[5] For crops such as soybeans, in which the seed and the harvest are one and the same, this will mean enough seeds for one year's crop on that acreage. Since the germination rate of a batch of seed declines over time, the soybean farmer will get the year-after-next's seeds from next year's harvest. That is not so for some vegetable crops, in which the seed is not the harvest, and a portion of the crop must be permitted to overripen ("go to seed") in order to obtain seeds. One of the *amici* in the Court of Appeals asserted (and the parties before us did not dispute) that it is the practice of vegetable farmers to "grow" seeds only every four or five years, and to "brown bag" enough seed for four or five future crops. A vegetable farmer who sets aside protected seed with subsequent replantings in mind, but who later abandons his plan (because he has sold his farm, for example), would under our analysis be able to sell all his saved seed, even though it would plant (in a single year) four or five times his current acreage.

that the only seed sellable under the exemption is seed saved for the farmer's own replanting, sought to achieve some limitation upon the quantity of seed that can be sold for reproductive purposes by adopting a "crop-by-crop" approach to the "primary farming occupation" requirement of the proviso. "[B]uyers or sellers of brown bag seed qualify for the crop exemption," it concluded, "only if they produce a larger crop from a protected seed for consumption (or other nonreproductive purposes) than for sale as seed." 982 F. 2d, at 490. That is to say, the brown-bag seller can sell no more than half of his protected crop for seed. The words of the statute, however, stand in the way of this creative (if somewhat insubstantial) limitation. To ask what is a farmer's "primary farming occupation" is to ask what constitutes the bulk of his total farming business. Selling crops for other than reproductive purposes must constitute the preponderance of the farmer's business, not just the preponderance of his business in the protected seed. There is simply no way to derive from this text the narrower focus that the Federal Circuit applied. Thus, if the quantity of seed that can be sold is not limited as we have described—by reference to the original purpose for which the seed is saved—then it is barely limited at all (*i. e.*, limited only by the volume or worth of the selling farmer's total crop sales for other than reproductive purposes). This seems to us a most unlikely result.

* * *

We hold that a farmer who meets the requirements set forth in the proviso to § 2543 may sell for reproductive purposes only such seed as he has saved for the purpose of replanting his own acreage. While the meaning of the text is by no means clear, this is in our view the only reading that comports with the statutory purpose of affording "adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties." 7 U. S. C. § 2581. Because we find the sales here were un-

lawful, we do not reach the second question on which we granted certiorari—whether sales authorized under § 2543 remain subject to the notice requirement of § 2541(6).

The judgment of the Court of Appeals for the Federal Circuit is

Reversed.

JUSTICE STEVENS, dissenting.

The key to this statutory puzzle is the meaning of the phrase, "as a step in marketing," as used in 7 U. S. C. § 2541(a)(3) (1988 ed., Supp. V). If it is synonymous with "for the purpose of selling," as the Court holds, see *ante*, at 188, then the majority's comprehensive exposition of the statute is correct. I record my dissent only because that phrase conveys a different message to me.

There must be a reason why Congress used the word "marketing" rather than the more common term "selling." Indeed, in § 2541(a)(1), contained in the same subsection of the statute as the crucial language, Congress made it an act of infringement to "sell the novel variety." Yet, in § 2541(a)(3), a mere two clauses later, Congress eschewed the word "sell" in favor of "marketing." Because Congress obviously could have prohibited sexual multiplication "as a step in selling," I presume that when it elected to prohibit sexual multiplication only "as a step in marketing (for growing purposes) the variety," Congress meant something different.

Moreover, as used in this statute, "marketing" must be narrower, not broader, than selling. The majority is correct that one meaning of "marketing" is the act of selling and all acts preparatory thereto. See *ante*, at 187. But Congress has prohibited only one preparatory act—that of sexual multiplication—and only when it is a step in marketing. Under the majority's broad definition of "marketing," prohibiting sexual multiplication "as a step in marketing" can be no broader than prohibiting sexual multiplication "as a step in selling," because all steps in marketing are, ultimately, steps

in selling. If "marketing" can be no broader than "selling," and if Congress did not intend the two terms to be coextensive, then "marketing" must encompass something less than all "selling."

The statute as a whole—and as interpreted by the Court of Appeals—indicates that Congress intended to preserve the farmer's right to engage in so-called "brown-bag sales" of seed to neighboring farmers. Congress limited that right by the express requirement that such sales may not constitute the "primary farming occupation" of either the buyer or the seller. Moreover, § 2541(a)(3) makes it abundantly clear that the unauthorized participation in "marketing" of protected varieties is taboo. If one interprets "marketing" to refer to a subcategory of selling activities, namely, merchandising through farm cooperatives, wholesalers, retailers, or other commercial distributors, the entire statute seems to make sense. I think Congress wanted to allow any ordinary brown-bag sale from one farmer to another; but, as the Court of Appeals concluded, it did not want to permit farmers to compete with seed manufacturers on their own ground, through "extensive or coordinated selling activities, such as advertising, using an intervening sales representative, or similar extended merchandising or retail activities." 982 F. 2d 486, 492 (CA Fed. 1992).

This reading of the statute is consistent with our time-honored practice of viewing restraints on the alienation of property with disfavor. See, *e. g.*, *Sexton* v. *Wheaton*, 8 Wheat. 229, 242 (1823) (opinion of Marshall, C. J.).* The seed at issue is part of a crop planted and harvested by a farmer on his own property. Generally the owner of per-

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*"It would seem to be a consequence of that absolute power which a man possesses over his own property, that he may make any disposition of it which does not interfere with the existing rights of others, and such disposition, if it be fair and real, will be valid. The limitations on this power are those only which are prescribed by law." *Sexton* v. *Wheaton*, 8 Wheat., at 242.

sonal property—even a patented or copyrighted article—is free to dispose of that property as he sees fit. See, *e. g.*, *United States* v. *Univis Lens Co.*, 316 U. S. 241, 250–252 (1942); *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, 350–351 (1908). A statutory restraint on this basic freedom should be expressed clearly and unambiguously. Cf. *Deepsouth Packing Co.* v. *Laitram Corp.*, 406 U. S. 518, 530–531 (1972). As the majority recognizes, the meaning of this statute is "by no means clear." *Ante*, at 192. Accordingly, both because I am persuaded that the Court of Appeals correctly interpreted the intent of Congress, and because doubts should be resolved against purported restraints on freedom, I would affirm the judgment below.

Syllabus

UNITED STATES *v.* MEZZANATTO

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

No. 93–1340. Argued November 2, 1994—Decided January 18, 1995

Respondent was convicted on federal drug charges after being cross-examined, over his counsel's objection, about inconsistent statements that he had made during an earlier plea discussion. The Ninth Circuit reversed, holding that respondent's agreement that any statements he made in the plea discussion could be used at trial for impeachment purposes was unenforceable under Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(e)(6) (Rules or plea-statement Rules), which exclude from admission into evidence against a criminal defendant statements made during plea bargaining.

Held: An agreement to waive the plea-statement Rules' exclusionary provisions is valid and enforceable absent some affirmative indication that the defendant entered the agreement unknowingly or involuntarily. Pp. 200–211.

(a) Contrary to the Ninth Circuit's conclusion, the Rules' failure to include an express waiver-enabling clause does not demonstrate Congress' intent to preclude waiver agreements such as respondent's. Rather, the Rules were enacted against a background presumption that legal rights generally, and evidentiary provisions specifically, are subject to waiver by voluntary agreement of the parties. See, *e. g.*, *Ricketts* v. *Adamson*, 483 U. S. 1, 10; *Sac and Fox Indians of Miss. in Iowa* v. *Sac and Fox Indians of Miss. in Okla.*, 220 U. S. 481, 488–489. *Crosby* v. *United States,* 506 U. S. 255, 259, and *Smith* v. *United States,* 360 U. S. 1, 9, distinguished. Respondent bears the responsibility of identifying some affirmative basis for concluding that the Rules depart from the presumption of waivability. Pp. 200–203.

(b) The three potential bases offered by respondent for concluding that the Rules are not consonant with the presumption of waivability—(a) that the Rules establish a "guarantee [to] fair procedure" that cannot be waived, (b) that waiver is fundamentally inconsistent with the Rules' goal of encouraging voluntary settlement, and (c) that waiver agreements should be forbidden because they invite prosecutorial overreaching and abuse—are not persuasive. Instead of the *per se* rejection of waiver adopted by the Ninth Circuit, the appropriate approach is to permit case-by-case inquiries into whether waiver agreements are the

product of fraud or coercion. Here, respondent conferred with his lawyer after the prosecutor proposed waiver as a condition of proceeding with the plea discussion, and he has never complained that he entered into the waiver agreement at issue unknowingly or involuntarily. Pp. 203–211.

998 F. 2d 1452, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined. GINSBURG, J., filed a concurring statement, in which O'CONNOR and BREYER, JJ., joined, *post*, p. 211. SOUTER, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 211.

Miguel A. Estrada argued the cause for the United States. With him on the briefs were *Solicitor General Days*, *Assistant Attorney General Harris*, and *Deputy Solicitor General Kneedler*.

Mark R. Lippman, by appointment of the Court, 511 U. S. 1067, argued the cause and filed a brief for respondent.*

JUSTICE THOMAS delivered the opinion of the Court.

Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(e)(6) provide that statements made in the course of plea discussions between a criminal defendant and a prosecutor are inadmissible against the defendant. The court below held that these exclusionary provisions may not be waived by the defendant. We granted certiorari to resolve a conflict among the Courts of Appeals, and we now reverse.

I

On August 1, 1991, San Diego Narcotics Task Force agents arrested Gordon Shuster after discovering a methamphetamine laboratory at his residence in Rainbow, California. Shuster agreed to cooperate with the agents, and a few hours

**John J. Cleary* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging affirmance.

after his arrest he placed a call to respondent's pager. When respondent returned the call, Shuster told him that a friend wanted to purchase a pound of methamphetamine for $13,000. Shuster arranged to meet respondent later that day.

At their meeting, Shuster introduced an undercover officer as his "friend." The officer asked respondent if he had "brought the stuff with him," and respondent told the officer it was in his car. The two proceeded to the car, where respondent produced a brown paper package containing approximately one pound of methamphetamine. Respondent then presented a glass pipe (later found to contain methamphetamine residue) and asked the officer if he wanted to take a "hit." The officer indicated that he would first get respondent the money; as the officer left the car, he gave a prearranged arrest signal. Respondent was arrested and charged with possession of methamphetamine with intent to distribute, in violation of 84 Stat. 1260, as amended, 21 U. S. C. § 841(a)(1).

On October 17, 1991, respondent and his attorney asked to meet with the prosecutor to discuss the possibility of cooperating with the Government. The prosecutor agreed to meet later that day. At the beginning of the meeting, the prosecutor informed respondent that he had no obligation to talk, but that if he wanted to cooperate he would have to be completely truthful. As a condition to proceeding with the discussion, the prosecutor indicated that respondent would have to agree that any statements he made during the meeting could be used to impeach any contradictory testimony he might give at trial if the case proceeded that far. Respondent conferred with his counsel and agreed to proceed under the prosecutor's terms.

Respondent then admitted knowing that the package he had attempted to sell to the undercover police officer contained methamphetamine, but insisted that he had dealt only in "ounce" quantities of methamphetamine prior to his ar-

rest. Initially, respondent also claimed that he was acting merely as a broker for Shuster and did not know that Shuster was manufacturing methamphetamine at his residence, but he later conceded that he knew about Shuster's laboratory. Respondent attempted to minimize his role in Shuster's operation by claiming that he had not visited Shuster's residence for at least a week before his arrest. At this point, the Government confronted respondent with surveillance evidence showing that his car was on Shuster's property the day before the arrest, and terminated the meeting on the basis of respondent's failure to provide completely truthful information.

Respondent eventually was tried on the methamphetamine charge and took the stand in his own defense. He maintained that he was not involved in methamphetamine trafficking and that he had thought Shuster used his home laboratory to manufacture plastic explosives for the CIA. He also denied knowing that the package he delivered to the undercover officer contained methamphetamine. Over defense counsel's objection, the prosecutor cross-examined respondent about the inconsistent statements he had made during the October 17 meeting. Respondent denied having made certain statements, and the prosecutor called one of the agents who had attended the meeting to recount the prior statements. The jury found respondent guilty, and the District Court sentenced him to 170 months in prison.

A panel of the Ninth Circuit reversed, over the dissent of Chief Judge Wallace. 998 F. 2d 1452 (1993). The Ninth Circuit held that respondent's agreement to allow admission of his plea statements for purposes of impeachment was unenforceable and that the District Court therefore erred in admitting the statements for that purpose. We granted certiorari because the Ninth Circuit's decision conflicts with the Seventh Circuit's decision in *United States* v. *Dortch*, 5 F. 3d 1056, 1067–1068 (1993).

II

Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(e)(6) (Rules or plea-statement Rules) are substantively identical. Rule 410 provides:

> "Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who . . . was a participant in the plea discussions: . . . (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty . . . ."

The Ninth Circuit noted that these Rules are subject to only two express exceptions,[1] neither of which says anything about waiver, and thus concluded that Congress must have meant to preclude waiver agreements such as respondent's. 998 F. 2d, at 1454–1456. In light of the "precision with which these rules are generally phrased," the Ninth Circuit declined to "write in a waiver in a waiverless rule." *Id.*, at 1456.[2]

The Ninth Circuit's analysis is directly contrary to the approach we have taken in the context of a broad array of constitutional and statutory provisions. Rather than deeming waiver presumptively unavailable absent some sort of ex-

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[1] A statement made by a criminal defendant in the course of plea discussions is "admissible (i) in any proceeding wherein another statement made in the course of the same . . . plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel." Fed. Rule Evid. 410. Accord, Fed. Rule Crim. Proc. 11(e)(6).

[2] Respondent also goes to great lengths to establish a proposition that is not at issue in this case: that the plea-statement Rules do not contain a blanket "impeachment" exception. We certainly agree that the Rules give a defendant the right not to be impeached by statements made during plea discussions, but that conclusion says nothing about whether the defendant may relinquish that right by voluntary agreement.

press enabling clause, we instead have adhered to the opposite presumption. See *Shutte* v. *Thompson*, 15 Wall. 151, 159 (1873) ("A party may waive any provision, either of a contract or of a statute, intended for his benefit"); *Peretz* v. *United States*, 501 U. S. 923, 936 (1991) ("The most basic rights of criminal defendants are . . . subject to waiver"). A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution. See, *e. g.*, *Ricketts* v. *Adamson*, 483 U. S. 1, 10 (1987) (double jeopardy defense waivable by pretrial agreement); *Boykin* v. *Alabama*, 395 U. S. 238, 243 (1969) (knowing and voluntary guilty plea waives privilege against compulsory self-incrimination, right to jury trial, and right to confront one's accusers); *Johnson* v. *Zerbst*, 304 U. S. 458, 465 (1938) (Sixth Amendment right to counsel may be waived). Likewise, absent some affirmative indication of Congress' intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties. See, *e. g.*, *Evans* v. *Jeff D.*, 475 U. S. 717, 730–732 (1986) (prevailing party in civil-rights action may waive its statutory eligibility for attorney's fees).

Our cases interpreting the Federal Rules of Criminal Procedure are consistent with this approach. The provisions of those Rules are presumptively waivable, though an express waiver clause may suggest that Congress intended to occupy the field and to preclude waiver under other, unstated circumstances. See *Crosby* v. *United States*, 506 U. S. 255 (1993); *Smith* v. *United States*, 360 U. S. 1 (1959). In *Crosby*, for example, we held that a defendant's failure to appear for any part of his trial did not constitute a valid waiver of his right to be present under Federal Rule of Criminal Procedure 43. We noted that the specific right codified in Rule 43 "was considered unwaivable in felony cases" at common law, and that Rule 43 expressly recognized only one exception to the common-law rule. 506 U. S., at 259. In light of the specific common-law history behind Rule 43 and the ex-

press waiver provision in the Rule, we declined to conclude that "the drafters intended the Rule to go further." *Id.*, at 260. Our decision in *Smith* followed a similar line of reasoning. It held that waiver of the indictment requirement embodied in Federal Rule of Criminal Procedure 7(a) is confined to the specific circumstances outlined in the Rule's text: "Rule 7(a) recognizes that this safeguard may be waived, but only in those proceedings which are noncapital." 360 U. S., at 9. Unlike Rules 43 and 7(a), however, the plea-statement Rules make no mention of waiver, and so *Crosby* and *Smith* provide no basis for setting aside the usual presumption.

The presumption of waivability has found specific application in the context of evidentiary rules. Absent some "overriding procedural consideration that prevents enforcement of the contract," courts have held that agreements to waive evidentiary rules are generally enforceable even over a party's subsequent objections. 21 C. Wright & K. Graham, Federal Practice and Procedure § 5039, pp. 207–208 (1977) (hereinafter Wright & Graham). Courts have "liberally enforced" agreements to waive various exclusionary rules of evidence. Note, Contracts to Alter the Rules of Evidence, 46 Harv. L. Rev. 138, 139–140 (1933). Thus, at the time of the adoption of the Federal Rules of Evidence, agreements as to the admissibility of documentary evidence were routinely enforced and held to preclude subsequent objections as to authenticity. See, *e. g.*, *Tupman Thurlow Co.* v. *S. S. Cap Castillo*, 490 F. 2d 302, 309 (CA2 1974); *United States* v. *Wing*, 450 F. 2d 806, 811 (CA9 1971). And although hearsay is inadmissible except under certain specific exceptions, we have held that agreements to waive hearsay objections are enforceable. See *Sac and Fox Indians of Miss. in Iowa* v. *Sac and Fox Indians of Miss. in Okla.*, 220 U. S. 481, 488–489 (1911); see also *United States* v. *Bonnett*, 877 F. 2d 1450, 1458–1459 (CA10 1989) (party's stipulation to admissibility of document precluded hearsay objection at trial).

Indeed, evidentiary stipulations are a valuable and integral part of everyday trial practice. Prior to trial, parties often agree in writing to the admission of otherwise objectionable evidence, either in exchange for stipulations from opposing counsel or for other strategic purposes. Both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure appear to contemplate that the parties will enter into evidentiary agreements during a pretrial conference. See Fed. Rule Civ. Proc. 16(c)(3); Fed. Rule Crim. Proc. 17.1. During the course of trial, parties frequently decide to waive evidentiary objections, and such tactics are routinely honored by trial judges. See 21 Wright & Graham § 5032, at 161 ("It is left to the parties, in the first instance, to decide whether or not the rules are to be enforced. . . . It is only in rare cases that the trial judge will . . . exclude evidence they are content to see admitted"); see also *United States* v. *Coonan*, 938 F. 2d 1553, 1561 (CA2 1991) (criminal defendant not entitled "to evade the consequences of an unsuccessful tactical decision" made in welcoming admission of otherwise inadmissible evidence).[3]

III

Because the plea-statement Rules were enacted against a background presumption that legal rights generally, and evidentiary provisions specifically, are subject to waiver by voluntary agreement of the parties, we will not interpret

[3] Respondent contends that a pretrial agreement to waive the exclusionary provisions of the plea-statement Rules is unlike a typical stipulation, which is entered into while the case is in progress, and is more like an extrajudicial agreement made outside the context of litigation. Brief for Respondent 39. While it may be true that extrajudicial contracts made prior to litigation trigger closer judicial scrutiny than stipulations made within the context of litigation, see 21 Wright & Graham § 5039, at 206, there is nothing extrajudicial about the waiver agreement at issue here. The agreement was made in the course of a plea discussion aimed at resolving the specific criminal case that was "in progress" against respondent.

Congress' silence as an implicit rejection of waivability. Respondent bears the responsibility of identifying some affirmative basis for concluding that the plea-statement Rules depart from the presumption of waivability.

Respondent offers three potential bases for concluding that the Rules should be placed beyond the control of the parties. We find none of them persuasive.

A

Respondent first suggests that the plea-statement Rules establish a "guarantee [to] fair procedure" that cannot be waived. Brief for Respondent 12. We agree with respondent's basic premise: There may be some evidentiary provisions that are so fundamental to the reliability of the factfinding process that they may never be waived without irreparably "discredit[ing] the federal courts." See 21 Wright & Graham § 5039, at 207–208; see also *Wheat* v. *United States*, 486 U. S. 153, 162 (1988) (court may decline a defendant's waiver of his right to conflict-free counsel); *United States* v. *Josefik*, 753 F. 2d 585, 588 (CA7 1985) ("No doubt there are limits to waiver; if the parties stipulated to trial by 12 orangutans the defendant's conviction would be invalid notwithstanding his consent, because some minimum of civilized procedure is required by community feeling regardless of what the defendant wants or is willing to accept"). But enforcement of agreements like respondent's plainly will not have that effect. The admission of plea statements for impeachment purposes *enhances* the truth-seeking function of trials and will result in more accurate verdicts. Cf. *Jenkins* v. *Anderson*, 447 U. S. 231, 238 (1980) (once a defendant decides to testify, he may be required to face impeachment on cross-examination, which furthers the "'function of the courts of justice to ascertain the truth'") (quoting *Brown* v. *United States*, 356 U. S. 148, 156 (1958)); Note, 46 Harv. L. Rev., at 142–143 ("[A] contract to deprive the court of relevant testimony . . . stands on a different

ground than one admitting evidence that would otherwise have been barred by an exclusionary rule. One contract is an impediment to ascertaining the facts, the other aids in the final determination of the true situation") (footnote omitted). Under any view of the evidence, the defendant has made a false statement, either to the prosecutor during the plea discussion or to the jury at trial; making the jury aware of the inconsistency will tend to increase the reliability of the verdict without risking institutional harm to the federal courts.

Respondent nevertheless urges that the plea-statement Rules are analogous to Federal Rule of Criminal Procedure 24(c), which provides that "[a]n alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict." JUSTICE KENNEDY's concurrence in *United States* v. *Olano*, 507 U. S. 725, 741 (1993), suggested that the guarantees of Rule 24(c) may never be waived by an agreement to permit alternate jurors to sit in on jury deliberations, and respondent asks us to extend that logic to the plea-statement Rules. But even if we assume that the requirements of Rule 24(c) are "the product of a judgment that our jury system should be given a stable and constant structure, one that cannot be varied by a court with or without the consent of the parties," *id.*, at 742, the plea-statement Rules plainly do not satisfy this standard. Rules 410 and 11(e)(6) "creat[e], in effect, a privilege of the defendant," 2 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 410[05], p. 410–43 (1994), and, like other evidentiary privileges, this one may be waived or varied at the defendant's request. The Rules provide that statements made in the course of plea discussions are inadmissible "against" the defendant, and thus leave open the possibility that a defendant may offer such statements into evidence for his own tactical advantage. Indeed, the Rules contemplate this result in permitting admission of statements made "in any proceeding wherein another statement made in the course of the same . . . plea discussions *has been introduced* and the statement

ought in fairness be considered contemporaneously with it." Fed. Rule Evid. 410(i) (emphasis added); accord, Fed. Rule Crim. Proc. 11(e)(6)(i). Thus, the plea-statement Rules expressly contemplate a degree of party control that is consonant with the background presumption of waivability.[4]

B

Respondent also contends that waiver is fundamentally inconsistent with the Rules' goal of encouraging voluntary settlement. See Advisory Committee's Notes on Fed. Rule Evid. 410 (purpose of Rule is "promotion of disposition of criminal cases by compromise"). Because the prospect of waiver may make defendants "think twice" before entering into any plea negotiation, respondent suggests that enforcement of waiver agreements acts "as a brake, not as a facilitator, to the plea-bargain process." Brief for Respondent 23, n. 17. The Ninth Circuit expressed similar concerns, noting that Rules 410 and 11(e)(6) "aid in obtaining th[e] cooperation" that is often necessary to identify and prosecute the leaders of a criminal conspiracy and that waiver of the protections of the Rules "could easily have a chilling effect on the entire plea bargaining process." 998 F. 2d, at 1455. According to the Ninth Circuit, the plea-statement Rules "permit the plea bargainer to maximize what he has 'to sell'" by preserving "the ability to withdraw from the bargain proposed by the prosecutor without being harmed by any of his

[4] The Ninth Circuit relied on *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697 (1945), but that case is easily distinguishable in this regard. *Brooklyn Savings Bank* held that certain statutory entitlements guaranteed to employees by the Fair Labor Standards Act of 1938 were unwaivable because the structure and legislative history of the Act evinced a specific "legislative policy" of "prevent[ing] private contracts" on such matters. *Id.*, at 706. Respondent has identified nothing in the structure or history of the plea-statement Rules that suggests that they were aimed at preventing private bargaining; in fact, the above discussion suggests that the Rules adopt a contrary view.

statements made in the course of an aborted plea bargaining session." *Ibid.*

We need not decide whether and under what circumstances substantial "public policy" interests may permit the inference that Congress intended to override the presumption of waivability, for in this case there is no basis for concluding that waiver will interfere with the Rules' goal of encouraging plea bargaining. The court below focused entirely on the *defendant's* incentives and completely ignored the other essential party to the transaction: the prosecutor. Thus, although the availability of waiver may discourage some defendants from negotiating, it is also true that prosecutors may be unwilling to proceed without it.

Prosecutors may be especially reluctant to negotiate without a waiver agreement during the early stages of a criminal investigation, when prosecutors are searching for leads and suspects may be willing to offer information in exchange for some form of immunity or leniency in sentencing. In this "cooperation" context, prosecutors face "painfully delicate" choices as to "whether to proceed and prosecute those suspects against whom the already produced evidence makes a case or whether to extend leniency or full immunity to some suspects in order to procure testimony against other, more dangerous suspects against whom existing evidence is flimsy or nonexistent." Hughes, Agreements for Cooperation in Criminal Cases, 45 Vand. L. Rev. 1, 15 (1992). Because prosecutors have limited resources and must be able to answer "sensitive questions about the credibility of the testimony" they receive before entering into any sort of cooperation agreement, *id.*, at 10, prosecutors may condition cooperation discussions on an agreement that the testimony provided may be used for impeachment purposes. See Thompson & Sumner, Structuring Informal Immunity, 8 Crim. Just. 16, 19 (spring 1993). If prosecutors were precluded from securing such agreements, they might well decline to enter into cooperation discussions in the first place

and might never take this potential first step toward a plea bargain.[5]

Indeed, as a logical matter, it simply makes no sense to conclude that mutual settlement will be encouraged by precluding negotiation over an issue that may be particularly important to one of the parties to the transaction. A sounder way to encourage settlement is to permit the interested parties to enter into knowing and voluntary negotiations without any arbitrary limits on their bargaining chips. To use the Ninth Circuit's metaphor, if the prosecutor is interested in "buying" the reliability assurance that accompanies a waiver agreement, then precluding waiver can only stifle the market for plea bargains. A defendant can "maximize" what he has to "sell" only if he is permitted to offer what the prosecutor is most interested in buying. And while it is certainly true that prosecutors often need help from the small fish in a conspiracy in order to catch the big ones, that is no reason to preclude waiver altogether. If prosecutors decide that certain crucial information will be gained only by preserving the inadmissibility of plea statements, they will agree to leave intact the exclusionary provisions of the plea-statement Rules.

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[5] We cannot agree with the dissent's conclusion that the policies expressed in the Advisory Committee's Notes to the plea-statement Rules indicate congressional animosity toward waivability. The Advisory Committee's Notes *always* provide some policy justification for the exclusionary provisions in the Rules, yet those policies merely justify the default rule of exclusion; they do not mean that the parties can never waive the default rule. Indeed, the dissent is unwilling to accept the logical result of its approach, which would require a wholesale rejection of the background presumption of party control over evidentiary provisions. Hearsay, for example, is generally excluded because it tends to lack "trustworthiness," see Advisory Committee's Notes on Article VIII of the Fed. Rules of Evid., 28 U. S. C. App., p. 770, yet even the dissent concedes that the hearsay rules are "waivable beyond any question," *post,* at 212. Thus, the mere existence of a policy justification for the plea-statement Rules cannot provide a sound basis for rejecting the background presumption of waivability.

In sum, there is no reason to believe that allowing negotiation as to waiver of the plea-statement Rules will bring plea bargaining to a grinding halt; it may well have the opposite effect.[6] Respondent's unfounded policy argument thus provides no basis for concluding that Congress intended to prevent criminal defendants from offering to waive the plea-statement Rules during plea negotiation.

C

Finally, respondent contends that waiver agreements should be forbidden because they invite prosecutorial overreaching and abuse. Respondent asserts that there is a "gross disparity" in the relative bargaining power of the parties to a plea agreement and suggests that a waiver agreement is "inherently unfair and coercive." Brief for Respondent 26. Because the prosecutor retains the discretion to "reward defendants for their substantial assistance" under the Sentencing Guidelines, respondent argues that defendants face an "'incredible dilemma'" when they are asked to accept waiver as the price of entering plea discussions. *Ibid.* (quoting *Green* v. *United States*, 355 U. S. 184, 193 (1957)).

The dilemma flagged by respondent is indistinguishable from any of a number of difficult choices that criminal defendants face every day. The plea bargaining process neces-

[6] Respondent has failed to offer any empirical support for his apocalyptic predictions, and data compiled by the Administrative Office of the United States Courts appear to contradict them. Prior to the Ninth Circuit's decision in this case (when, according to the Solicitor General, federal prosecutors in that Circuit used waiver agreements like the one invalidated by the court below, see Pet. for Cert. 10–11), approximately 92.2% of the convictions in the Ninth Circuit were secured through pleas of guilty or *nolo contendere*. Annual Report of the Director, Administrative Office of the United States Courts, Judicial Business of the United States Courts 278 (1992) (Table D–7). During that same period, about 88.8% of the convictions in all federal courts were secured by voluntary pleas. *Id.*, at 276.

sarily exerts pressure on defendants to plead guilty and to abandon a series of fundamental rights, but we have repeatedly held that the government "may encourage a guilty plea by offering substantial benefits in return for the plea." *Corbitt* v. *New Jersey*, 439 U. S. 212, 219 (1978). "While confronting a defendant with the risk of more severe punishment clearly may have a 'discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices [is] an inevitable'—and permissible—'attribute of any legitimate system which tolerates and encourages the negotiation of pleas.'" *Bordenkircher* v. *Hayes*, 434 U. S. 357, 364 (1978) (quoting *Chaffin* v. *Stynchcombe*, 412 U. S. 17, 31 (1973)).

The mere potential for abuse of prosecutorial bargaining power is an insufficient basis for foreclosing negotiation altogether. "Rather, tradition and experience justify our belief that the great majority of prosecutors will be faithful to their duty." *Newton* v. *Rumery*, 480 U. S. 386, 397 (1987) (plurality opinion); see also *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 14–15 (1926) ("[I]n the absence of clear evidence to the contrary, courts presume that [public officers] have properly discharged their official duties"). Thus, although some waiver agreements "may not be the product of an informed and voluntary decision," this possibility "does not justify invalidating *all* such agreements." *Newton*, *supra*, at 393 (majority opinion). Instead, the appropriate response to respondent's predictions of abuse is to permit case-by-case inquiries into whether waiver agreements are the product of fraud or coercion. We hold that absent some affirmative indication that the agreement was entered into unknowingly or involuntarily, an agreement to waive the exclusionary provisions of the plea-statement Rules is valid and enforceable.

IV

Respondent conferred with his lawyer after the prosecutor proposed waiver as a condition of proceeding with the plea

discussion, and he has never complained that he entered into the waiver agreement at issue unknowingly or involuntarily. The Ninth Circuit's decision was based on its *per se* rejection of waiver of the plea-statement Rules. Accordingly, the judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE O'CONNOR and JUSTICE BREYER join, concurring.

The Court holds that a waiver allowing the Government to impeach with statements made during plea negotiations is compatible with Congress' intent to promote plea bargaining. It may be, however, that a waiver to use such statements in the case in chief would more severely undermine a defendant's incentive to negotiate, and thereby inhibit plea bargaining. As the Government has not sought such a waiver, we do not here explore this question.

JUSTICE SOUTER, with whom JUSTICE STEVENS joins, dissenting.

This case poses only one question: did Congress intend to create a personal right subject to waiver by its individual beneficiaries when it adopted Rule 410 of the Federal Rules of Evidence and Rule 11(e)(6) of the Federal Rules of Criminal Procedure, each Rule providing that statements made during plea discussions are inadmissible against the defendant except in two carefully described circumstances? The case raises no issue of policy to be settled by the courts, and if the generally applicable (and generally sound) judicial policy of respecting waivers of rights and privileges should conflict with a reading of the Rules as reasonably construed to accord with the intent of Congress, there is no doubt that congressional intent should prevail. Because the majority ruling is at odds with the intent of Congress and will render the Rules largely dead letters, I respectfully dissent.

At first glance, the question of waivability may seem short on substance, given the unconditional language of the two virtually identical Rules, unsoftened by any provision for waiver or allusion to that possibility:

> "Except as otherwise provided in this rule, evidence . . . is not . . . admissible against the defendant who . . . was a participant in . . . plea discussions [of]
>
> . . . . .
>
> "any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty . . . [subject to two stated exceptions]." Fed. Rule Evid. 410.

Believers in plain meaning might be excused for thinking that the text answers the question. But history may have something to say about what is plain, and here history is not silent. If the Rules are assumed to create only a personal right of a defendant, the right arguably finds itself in the company of other personal rights, including constitutional ones, that have been accepted time out of mind as being freely waivable. See, *e. g.*, *Johnson* v. *Zerbst*, 304 U. S. 458, 465 (1938) (Sixth Amendment right to counsel may be waived). The possibility that the Rules in question here do create such a personal right must, indeed, be taken seriously if for no other reason than that the Rules of Evidence contain other bars to admissibility equally uncompromising on their face but nonetheless waivable beyond any question. See Fed. Rule Evid. 802 (hearsay); Fed. Rule Evid. 1002 (best evidence).

The majority comes down on the side of waivability through reliance on the general presumption in favor of recognizing waivers of rights, including evidentiary rights. To be sure, the majority recognizes that the presumption does not necessarily resolve the issue before us, and the majority opinion describes some counterexamples of rights that are insulated against waiver, at least when waiver is expressly

prohibited or limited in terms that speak of waiver expressly. See *Crosby* v. *United States*, 506 U. S. 255 (1993); *Smith* v. *United States*, 360 U. S. 1 (1959). Still, the majority seems to assume that the express-waiver cases describe the only circumstances in which the recognition of waiver is foreclosed, and since the Rules in question here say nothing about "waiver" as such, the majority finds that fact really to be the end of the matter.

If there were nothing more to go on here, I, too, would join the majority in relying on the fallback rule of permissible waiver. But there is more to go on. There is, indeed, good reason to believe that Congress rejected the general rule of waivability when it passed the Rules in issue here, and once the evidence of such congressional intent is squarely faced, we have no business but to respect it (or deflect it by applying some constitutionally mandated requirement of clear statement). There is, of course, no claim in this case that Congress should be hobbled by any clear statement rule, and the result is that we are bound to respect the intent that the Advisory Committee's Notes to the congressionally enacted Rules reveal. See *Williamson* v. *United States*, 512 U. S. 594, 614–615 (1994) (KENNEDY, J., concurring in judgment) (citing cases in which Advisory Committee's Notes are taken as authoritative evidence of intent).

The fact underlying those Notes, and the fact of which all congressional and judicial action must take account in dealing with the possible evidentiary significance of plea discussions, is that the federal judicial system could not possibly litigate every civil and criminal case filed in the courts. The consequence of this is that plea bargaining is an accepted feature of the criminal justice system, and, "[p]roperly administered, it is to be encouraged." *Santobello* v. *New York*, 404 U. S. 257, 260 (1971). Thus the Advisory Committee's Notes on Rule 410 explained that "[e]xclusion of offers to plead guilty or *nolo* has as its purpose the promotion of disposition of criminal cases by compromise." 28 U. S. C. App.,

p. 750. "As with compromise offers generally, . . . free communication is needed, and security against having an offer of compromise or related statement admitted in evidence effectively encourages it." *Ibid.* The Advisory Committee's Notes on Rule 11(e)(6) drew the same conclusion about the purpose of that Rule and summed up the object of both Rules as being "to permit the unrestrained candor which produces effective plea discussions between the attorney for the government and the attorney for the defendant or the defendant when acting pro se." 18 U. S. C. App., p. 745 (1979 Amendment) (internal quotation marks omitted).

These explanations show with reasonable clarity that Congress probably made two assumptions when it adopted the Rules: pleas and plea discussions are to be encouraged, and conditions of unrestrained candor are the most effective means of encouragement. The provisions protecting a defendant against use of statements made in his plea bargaining are thus meant to create something more than a personal right shielding an individual from his imprudence. Rather, the Rules are meant to serve the interest of the federal judicial system (whose resources are controlled by Congress), by creating the conditions understood by Congress to be effective in promoting reasonable plea agreements. Whether Congress was right or wrong that unrestrained candor is necessary to promote a reasonable number of plea agreements, Congress assumed that there was such a need and meant to satisfy it by these Rules. Since the zone of unrestrained candor is diminished whenever a defendant has to stop to think about the amount of trouble his openness may cause him if the plea negotiations fall through, Congress must have understood that the judicial system's interest in candid plea discussions would be threatened by recognizing waivers under Rules 410 and 11(e)(6). See ABA Standards for Criminal Justice 14–3.4, commentary (2d ed. 1980) (a rule contrary to the one adopted by Congress "would discourage plea negotiations and agreements, for defendants would have

to be constantly concerned whether, in light of their plea negotiation activities, they could successfully defend on the merits if a plea ultimately was not entered"). There is, indeed, no indication that Congress intended merely a regime of such limited openness as might happen to survive market forces sufficient to supplant a default rule of inadmissibility. Nor may Congress be presumed to have intended to permit waivers that would undermine the stated policy of its own Rules. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 704 (1945) ("Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate").

It bears emphasizing that I would not suggest that there is only one reasonable balance possible between society's interest in encouraging compromise (which Congress thought to be served most effectively by refusing to recognize waivers of rights under these Rules) and society's interest in providing a vigorous adversary system when cases are tried (which may be served by recognizing waivers). The majority may be right that a better balance could have been struck than the one Congress intended. The majority may also be correct as a matter of policy that enough pleas will result even if parties are allowed to make their own rule of admissibility by agreement, with prosecutors refusing to talk without a defendant's waiver (unless such refusal overloads the system beyond its capacity for trials) and defendants refusing to waive (unless they are desperate enough to forgo their option to be tried without fear of compromising statements if the plea negotiations fail). But whether the majority is right or wrong on either score is beside the point; the policy it endorses is not the policy that Congress intended when it enacted the Rules. See *Touche Ross & Co.* v. *Redington*, 442 U. S. 560, 578 (1979) ("The ultimate question is one of congressional intent, not one of whether this Court thinks

that it can improve upon the statutory scheme that Congress enacted into law").

The unlikelihood that Congress intended the modest default rule that the majority sees in Rules 11(e)(6) and 410 looms all the larger when the consequences of the majority position are pursued. The first consequence is that the Rules will probably not even function as default rules, for there is little chance that they will be applied at all. Already, standard forms indicate that many federal prosecutors routinely require waiver of Rules 410 and 11(e)(6) rights before a prosecutor is willing to enter into plea discussions. Pet. for Cert. 10–11. See also *United States* v. *Stevens*, 935 F. 2d 1380, 1396 (CA3 1991) ("Plea agreements . . . commonly contain a provision stating that proffer information that is disclosed during the course of plea negotiations is . . . admissible for purposes of impeachment"). As the Government conceded during oral argument, defendants are generally in no position to challenge demands for these waivers, and the use of waiver provisions as contracts of adhesion has become accepted practice.[1] Today's decision can only speed the heretofore illegitimate process by which the exception has been swallowing the Rules. See, *e. g.*, *Guidry* v. *Sheet Metal Workers Nat. Pension Fund*, 493 U. S. 365, 377 (1990) (no exception should be made by Court because it would be too difficult to "carve out an exception that would not swallow the rule"); *United States* v. *Powell*, 469 U. S. 57, 68 (1984) (respondent's suggested exception to the *Dunn* rule "threat-

[1] The argument that the plea-bargaining system still works even though waiver has become the accepted practice does not answer the question whether Congress intended to permit a waiver rule. The Court's obligation is to interpret criminal procedure and evidentiary rules according to congressional intent. If the Government believes that the better rule is different from what is currently the law, the Government can petition Congress to change it. See *TVA* v. *Hill*, 437 U. S. 153, 194 (1978) ("Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute").

ens to swallow the rule"). See also 23 C. Wright & K. Graham, Federal Practice and Procedure 121–122, n. 7.3 (1994 Supp.) ("It would seem strange if the prosecutor could undermine the judicial policy, now endorsed by Congress, of encouraging plea bargaining by announcing a policy that his office will only plea bargain with defendants who 'waive' the benefits of Rule 410"). Accordingly, it is probably only a matter of time until the Rules are dead letters.

The second consequence likely to emerge from today's decision is the practical certainty that the waiver demanded will in time come to function as a waiver of trial itself. It is true that many (if not all) of the waiver forms now employed go only to admissibility for impeachment.[2] But although the erosion of the Rules has begun with this trickle, the majority's reasoning will provide no principled limit to it. The Rules draw no distinction between use of a statement for impeachment and use in the Government's case in chief. If objection can be waived for impeachment use, it can be waived for use as affirmative evidence, and if the Government can effectively demand waiver in the former instance, there is no reason to believe it will not do so just as successfully in the latter. When it does, there is nothing this Court will legitimately be able to do about it. The Court is construing a congressional Rule on the theory that Congress meant to permit its waiver. Once that point is passed, as it is today, there is no legitimate limit on admissibility of a defendant's plea negotiation statements beyond what the Constitution may independently impose or the traf-

[2] Waiver for impeachment use, however, has been applied broadly. For example, plea statements have been used to impeach a defendant's witnesses even where the defendant has chosen not to testify. See *United States* v. *Dortch*, 5 F. 3d 1056, 1069 (CA7 1993) ("[J]ust as the defendant must choose whether to protect the proffer statements by not taking the stand, the defendant must choose whether to protect the proffer by carefully determining which lines of questioning to pursue with different witnesses"), cert. pending *sub nom. Suess* v. *United States*, No. 93–7218.

fic may bear. Just what the traffic may bear is an open question, but what cannot be denied is that the majority opinion sanctions a demand for waiver of such scope that a defendant who gives it will be unable even to acknowledge his desire to negotiate a guilty plea without furnishing admissible evidence against himself then and there. In such cases, the possibility of trial if no agreement is reached will be reduced to fantasy. The only defendant who will not damage himself by even the most restrained candor will be the one so desperate that he might as well walk into court and enter a naked guilty plea. It defies reason to think that Congress intended to invite such a result, when it adopted a Rule said to promote candid discussion in the interest of encouraging compromise.

Syllabus

AMERICAN AIRLINES, INC. *v.* WOLENS ET AL.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 93–1286. Argued November 1, 1994—Decided January 18, 1995

In consolidated state-court class actions brought in Illinois, plaintiffs (respondents here), as participants in American Airlines' frequent flyer program, challenged American's retroactive changes in program terms and conditions—particularly, American's imposition of capacity controls (limits on seats available to passengers obtaining tickets with frequent flyer credits) and blackout dates (restrictions on dates such credits could be used). Plaintiffs alleged that application of these changes to mileage credits they had previously accumulated violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act or Act) and constituted a breach of contract. American answered that the Airline Deregulation Act of 1978 (ADA), 49 U. S. C. App. § 1305(a)(1), preempted plaintiffs' claims. The ADA prohibits States from "enact-[ing] or enforc[ing] any law . . . or other provision having the force and effect of law relating to [air carrier] rates, routes, or services."

While the Illinois class-action litigation was *sub judice*, this Court decided *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374. *Morales* defined § 1305(a)(1)'s "relating to" language to mean "having a connection with, or reference to, airline 'rates, routes, or services,'" *id.*, at 384, and held that National Association of Attorneys General (NAAG) guidelines on airline fare advertising were preempted under that definition. The Illinois Supreme Court, post-*Morales*, ruled that plaintiffs' monetary claims survived for state-court adjudication. Those claims related only "tangential[ly]" or "tenuous[ly]" to "rates, routes, or services," the Illinois court reasoned, because frequent flyer programs are "peripheral," not "essential," to an airline's operation.

Held: The ADA's preemption prescription bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms set by the parties themselves. Pp. 226–235.

(a) *Morales* does not countenance the Illinois Supreme Court's separation of "essential" operations from unessential programs. Plaintiffs' complaints, accordingly, state claims "relating to" air carrier "rates" (*i. e.*, American's charges, in the form of mileage credits, for tickets and class-of-service upgrades) and "services" (*i. e.*, access to flights and upgrades unlimited by retrospectively applied capacity controls and blackout dates). P. 226.

Syllabus

(b) The full text of the ADA's preemption clause, and the congressional purpose to leave largely to the airlines themselves, and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air transportation services, impel the conclusion that § 1305(a)(1) preempts plaintiffs' Consumer Fraud Act claims. The Illinois Act is prescriptive, controlling the primary conduct of those falling within its governance; the Act, indeed, is paradigmatic of the state consumer protection laws that underpin the NAAG guidelines. Those guidelines highlight the potential for intrusive regulation of airline business practices inherent in state consumer protection legislation. The guidelines illustrate that the Illinois Act does not simply give effect to bargains offered by the airlines and accepted by customers, but serves as a means to guide and police airline marketing practices. Pp. 227–228.

(c) The ADA, however, does not bar court adjudication of routine breach-of-contract claims. The preemption clause leaves room for suits alleging no violation of state-imposed obligations, but seeking recovery solely for the airline's breach of its own, self-imposed undertakings. As persuasively argued by the United States, terms and conditions airlines offer and passengers accept are privately ordered obligations and thus do not fit within the compass of state enactments and directives targeted by § 1305(a)(1). A remedy confined to a contract's terms simply holds parties to their agreements—in this instance, to business judgments an airline made public about its rates and services. Court enforcement of private agreements advances the market efficiency that the ADA was designed to promote, and comports with provisions of the Federal Aviation Act of 1958 (FAA) and related Department of Transportation (DOT) regulations that presuppose the vitality of contracts governing air carrier transportation. Such enforcement is responsive to the reality that the DOT lacks the apparatus and resources required to superintend a contract dispute resolution regime. Court adjudication of routine breach-of-contract claims, furthermore, accords due recognition to Congress' retention of the FAA's saving clause, which preserves "the remedies now existing at common law or by statute." Nor can it be maintained that plaintiffs' breach-of-contract claims are identical to, and therefore should be preempted to the same extent as, their Consumer Fraud Act claims. The basis for a contract action is the parties' agreement; to succeed under the state Act, one need not show an agreement, but must show an unfair or deceptive practice. Pp. 228–233.

(d) American's argument that plaintiffs' claims must fail because they depend on state policies independent of the parties' intent assumes the answer to the very contract construction issue on which plaintiffs' claims turn: Did American, by contract, reserve the right to change the

value of already accumulated mileage credits, or only to change the rules for credits earned from and after the date of the change? That pivotal question of contract interpretation has not yet had a full airing and remains open for adjudication on remand. Pp. 233–234.

157 Ill. 2d 466, 626 N. E. 2d 205, affirmed in part, reversed in part, and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and KENNEDY, SOUTER, and BREYER, JJ., joined, and in which STEVENS, J., joined as to Parts I (except for the last paragraph) and II–B. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 235. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, J., joined except for Part I–B, *post*, p. 238. SCALIA, J., took no part in the decision of the case.

Bruce J. Ennis, Jr., argued the cause for petitioner. With him on the briefs were *Jerold S. Solovy*, *Marguerite M. Tompkins*, *Donald B. Verrilli, Jr.*, *Richard A. Rothman*, *Bonnie Garone*, and *Michael J. Rider.*

Gilbert W. Gordon argued the cause for respondents. With him on the brief were *Robert Marks*, *Michael J. Freed*, *Michael B. Hyman*, *Nicholas E. Chimicles*, *Ira Neil Richards*, and *Steven A. Schwartz.*

Cornelia T. L. Pillard argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, *Robert V. Zener*, *Jonathan R. Siegel*, and *Paul M. Geier.**

JUSTICE GINSBURG delivered the opinion of the Court.

The Airline Deregulation Act of 1978 prohibits States from "enact[ing] or enforc[ing] any law . . . relating to

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Kenneth B. Alexander* and *Stephen A. Bokat;* for the Air Transport Association of America by *John G. Roberts, Jr.*, *Walter A. Smith, Jr.*, *Mary E. Downs*, *John R. Keys, Jr.*, and *Calvin P. Sawyier;* and for United Air Lines, Inc., by *Kenneth W. Starr*, *Paul T. Cappuccio*, and *J. Andrew Langan.*

[air carrier] rates, routes, or services." 49 U. S. C. App. § 1305(a)(1). This case concerns the scope of that preemptive provision, specifically, its application to a state-court suit, brought by participants in an airline's frequent flyer program, challenging the airline's retroactive changes in terms and conditions of the program. We hold that the ADA's preemption prescription bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms set by the parties themselves.

I

A

Until 1978, the Federal Aviation Act of 1958 (FAA), 72 Stat. 731, as amended, 49 U. S. C. App. § 1301 *et seq.* (1988 ed. and Supp. V), empowered the Civil Aeronautics Board (CAB) to regulate the interstate airline industry. Although the FAA, pre-1978, authorized the Board both to regulate fares and to take administrative action against deceptive trade practices, the federal legislation originally contained no clause preempting state regulation. And from the start, the FAA has contained a "saving clause," § 1106, 49 U. S. C. App. § 1506, stating: "Nothing . . . in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."

In 1978, Congress enacted the Airline Deregulation Act (ADA), 92 Stat. 1705, which largely deregulated domestic air transport. "To ensure that the States would not undo federal deregulation with regulation of their own," *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 378 (1992), the ADA included a preemption clause which read in relevant part:

> "[N]o State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force

and effect of law relating to rates, routes, or services of any air carrier . . . ." 49 U. S. C. App. § 1305(a)(1).[1]

This case is our second encounter with the ADA's preemption clause. In 1992, in *Morales*, we confronted detailed Travel Industry Enforcement Guidelines, composed by the National Association of Attorneys General (NAAG). The NAAG guidelines purported to govern, *inter alia*, the content and format of airline fare advertising. See *Morales*, 504 U. S., at 393–418 (appendix to Court's opinion setting out NAAG guidelines on air travel industry advertising and marketing practices). Several States had endeavored to enforce the NAAG guidelines, under the States' general consumer protection laws, to stop allegedly deceptive airline advertisements. The States' initiative, we determined, " 'relat[ed] to [airline] rates, routes, or services,' " *id.*, at 378–379 (quoting 49 U. S. C. App. § 1305(a)(1)); consequently, we held, the fare advertising provisions of the NAAG guidelines were preempted by the ADA, *id.*, at 391.

For aid in construing the ADA words "relating to rates, routes, or services of any air carrier," the Court in *Morales* referred to the Employee Retirement Income Security Act of 1974 (ERISA), which provides for preemption of state laws "insofar as they . . . relate to any employee benefit plan." 29 U. S. C. § 1144(a). Under the ERISA, we had ruled, a state law "relates to" an employee benefit plan "if it has a connection with or reference to such a plan." *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 97 (1983). *Morales* analogously defined the "relating to" language in the ADA preemption clause as "having a connection with, or reference to, airline 'rates, routes, or services.' " *Morales*, 504 U. S., at 384.

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[1] Reenacting Title 49 of the U. S. Code in 1994, Congress revised this clause to read:

"[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . . ." § 41713(b)(1). Congress intended the revision to make no substantive change. Pub. L. 103–272, § 1(a), 108 Stat. 745.

The *Morales* opinion presented much more, however, in accounting for the ADA's preemption of the state regulation in question. The opinion pointed out that the concerned federal agencies—the Department of Transportation (DOT)[2] and the Federal Trade Commission (FTC)—objected to the NAAG fare advertising guidelines as inconsistent with the ADA's deregulatory purpose; both agencies, *Morales* observed, regarded the guidelines as state regulatory measures preempted by the ADA. See *id.*, at 379 (DOT and FTC); *id.*, at 386 (DOT); *id.*, at 390 (FTC). *Morales* emphasized that the challenged guidelines set "binding requirements as to how airline tickets may be marketed," and "imposed [obligations that] would have a significant impact upon . . . the fares [airlines] charge." *Id.*, at 388, 390. The opinion further noted that the airlines would not have "*carte blanche* to lie and deceive consumers," for "the DOT retains the power to prohibit advertisements which in its opinion do not further competitive pricing." *Id.*, at 390–391. *Morales* also left room for state actions "too tenuous, remote, or peripheral . . . to have pre-emptive effect." *Id.*, at 390 (internal quotation marks omitted).

B

The litigation now before us, two consolidated state-court class actions brought in Illinois, was *sub judice* when we decided *Morales.* Plaintiffs in both actions (respondents here) are participants in American Airlines' frequent flyer program, AAdvantage. AAdvantage enrollees earn mileage credits when they fly on American. They can exchange those credits for flight tickets or class-of-service upgrades. Plaintiffs complained that AAdvantage program modifications, instituted by American in 1988, devalued credits AAd-

[2] Deceptive trade practices regulatory authority formerly residing in the CAB was transferred to the DOT when the CAB was abolished in 1985. Civil Aeronautics Board Sunset Act of 1984, Pub. L. 98–443, § 3, 98 Stat. 1703; 49 U. S. C. App. § 1551.

vantage members had already earned. Plaintiffs featured American's imposition of capacity controls (limits on seats available to passengers obtaining tickets with AAdvantage credits) and blackout dates (restrictions on dates credits could be used). Conceding that American had reserved the right to change AAdvantage terms and conditions, plaintiffs challenged only the retroactive application of modifications, *i. e.*, cutbacks on the utility of credits previously accumulated. These cutbacks, plaintiffs maintained, violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act or Act), 815 Ill. Comp. Stat. § 505 (1992) (formerly codified at Ill. Rev. Stat., ch. 121½, ¶ 261 *et seq.* (1991)), and constituted a breach of contract. Plaintiffs currently seek only monetary relief.[3]

In March 1992, several weeks before our decision in *Morales*, the Illinois Supreme Court rejected plaintiffs' prayer for an injunction. Such a decree, the Illinois court reasoned, would involve regulation of an airline's current rendition of services, a matter preempted by the ADA. That court, however, allowed the breach-of-contract and Consumer Fraud Act monetary relief claims to survive. The ADA's preemption clause, the Illinois court said, ruled out "only those State laws and regulations that specifically relate to and have more than a tangential connection with an airline's rates, routes or services." *American Airlines, Inc.* v. *Wolens*, 147 Ill. 2d 367, 373, 589 N. E. 2d 533, 536 (1992). After our decision in *Morales*, American petitioned for certiorari. The airline charged that the Illinois court, in a decision out of sync with *Morales*, had narrowly construed the ADA's broadly preemptive § 1305(a)(1). We granted the petition,

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[3] Plaintiffs no longer pursue requests they originally made for injunctive relief, or for punitive damages for alleged breach of contract. See Brief for Respondents 2, n. 2 (plaintiffs do not here contest holding of Illinois courts that injunctive relief is preempted); *id.*, at 6, n. 9 (plaintiffs "concede that punitive damages traditionally have not been recoverable for a simple breach of contract").

vacated the judgment of the Supreme Court of Illinois, and remanded for further consideration in light of *Morales. American Airlines, Inc.* v. *Wolens,* 506 U. S. 803 (1992).

On remand, the Illinois Supreme Court, with one dissent, adhered to its prior judgment. Describing frequent flyer programs as not "essential," 157 Ill. 2d 466, 472, 626 N. E. 2d 205, 208 (1993), but merely "peripheral to the operation of an airline," *ibid.,* the Illinois court typed plaintiffs' state-law claims for money damages as "relat[ed] to American's rates, routes, and services" only "tangential[ly]" or "tenuous[ly]," *ibid.*

We granted American's second petition for certiorari, 511 U. S. 1017 (1994), and we now reverse the Illinois Supreme Court's judgment to the extent that it allowed survival of plaintiffs' Consumer Fraud Act claims; we affirm that judgment, however, to the extent that it permits plaintiffs' breach-of-contract action to proceed. In both respects, we adopt the position of the DOT, as advanced in this Court by the United States.

II

We need not dwell on the question whether plaintiffs' complaints state claims "relating to [air carrier] rates, routes, or services." *Morales,* we are satisfied, does not countenance the Illinois Supreme Court's separation of matters "essential" from matters unessential to airline operations. Plaintiffs' claims relate to "rates," *i. e.,* American's charges in the form of mileage credits for free tickets and upgrades, and to "services," *i. e.,* access to flights and class-of-service upgrades unlimited by retrospectively applied capacity controls and blackout dates. But the ADA's preemption clause contains other words in need of interpretation, specifically, the words "enact or enforce any law" in the instruction: "[N]o State . . . shall enact or enforce any law . . . relating to [air carrier] rates, routes, or services." 49 U. S. C. App. § 1305(a)(1). Taking into account all the words Congress placed in § 1305(a)(1), we first consider whether plaintiffs'

claims under the Consumer Fraud Act are preempted, and then turn to plaintiffs' breach-of-contract claims.

A

The Consumer Fraud Act declares unlawful

> "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act' . . . in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." Ill. Comp. Stat., ch. 815, § 505/2 (1992) (formerly codified at Ill. Rev. Stat., ch. 121½, ¶ 262 (1991)).

The Act is prescriptive; it controls the primary conduct of those falling within its governance. This Illinois law, in fact, is paradigmatic of the consumer protection legislation underpinning the NAAG guidelines. The NAAG Task Force on the Air Travel Industry, on which the Attorneys General of California, Illinois, Texas, and Washington served, see *Morales*, 504 U. S., at 392, reported that the guidelines created no

> "new laws or regulations regarding the advertising practices or other business practices of the airline industry. They merely explain in detail how existing state laws apply to air fare advertising and frequent flyer programs." *Ibid.*

The NAAG guidelines highlight the potential for intrusive regulation of airline business practices inherent in state consumer protection legislation typified by the Con-

sumer Fraud Act. For example, the guidelines enforcing the legislation instruct airlines on language appropriate to reserve rights to alter frequent flyer programs, and they include transition rules for the fair institution of capacity controls. See Brief for United States as *Amicus Curiae* 13–14, n. 7.

As the NAAG guidelines illustrate, the Consumer Fraud Act serves as a means to guide and police the marketing practices of the airlines; the Act does not simply give effect to bargains offered by the airlines and accepted by airline customers. In light of the full text of the preemption clause, and of the ADA's purpose to leave largely to the airlines themselves, and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air transportation services,[4] we conclude that § 1305(a)(1) preempts plaintiffs' claims under the Consumer Fraud Act.

B

American maintains, and we agree, that "Congress could hardly have intended to allow the States to hobble [competition for airline passengers] through the application of restrictive state laws." Brief for Petitioner 27. We do not read the ADA's preemption clause, however, to shelter airlines from suits alleging no violation of state-imposed obligations, but seeking recovery solely for the airline's alleged breach of its own, self-imposed undertakings. As persuasively argued by the United States, terms and conditions airlines offer and passengers accept are privately ordered obligations

[4] We note again, however, that the DOT retains authority to investigate unfair and deceptive practices and unfair methods of competition by airlines, and may order an airline to cease and desist from such practices or methods of competition. See FAA § 411, 49 U. S. C. App. § 1381(a); *Morales*, 504 U. S., at 379; see also Brief for United States as *Amicus Curiae* 3, and n. 2 (reporting that in 1993, the DOT issued 34 cease-and-desist orders and assessed more than $1.8 million in civil penalties in aviation economic enforcement proceedings).

"and thus do not amount to a State's 'enact[ment] or enforce-[ment] [of] any law, rule, regulation, standard, or other provision having the force and effect of law' within the meaning of [§]1305(a)(1)."[5] Brief for United States as *Amicus Curiae* 9. Cf. *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 526 (1992) (plurality opinion) ("[A] common-law remedy for a contractual commitment voluntarily undertaken should not be regarded as a 'requirement . . . *imposed under State law*' within the meaning of [Federal Cigarette Labeling and Advertising Act] § 5(b)."). A remedy confined to a contract's terms simply holds parties to their agreements—in this instance, to business judgments an airline made public about its rates and services.[6]

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[5] The United States recognizes that § 1305(a)(1), because it contains the word "enforce" as well as "enact," "could perhaps be read to preempt even state-court enforcement of private contracts." Brief for United States as *Amicus Curiae* 17. But the word series "law, rule, regulation, standard, or other provision," as the United States suggests, "connotes official, government-imposed policies, not the terms of a private contract." *Id.*, at 16. Similarly, the phrase "having the force and effect of law" is most naturally read to "refe[r] to binding standards of conduct that operate irrespective of any private agreement." *Ibid.* Finally, the ban on enacting or enforcing any law "relating to rates, routes, or services" is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean "States may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier." *Ibid.*

[6] American notes that in *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991), the Court read the word "law" in a statutory exemption, 49 U. S. C. § 11341(a), to include "laws that govern the obligations imposed by contract." But that statute and case are not comparable to the statute and case before us. *Norfolk & Western* concerned the authority of the Interstate Commerce Commission (ICC) to approve rail carrier consolidations. A carrier participating in an ICC-approved consolidation is exempt "from the antitrust laws and from all other law . . . as necessary to let [the participant] carry out the transaction." 49 U. S. C. § 11341(a). We read the exemption clause to empower the ICC to override, individually, a carrier's obligations under a collective-bargaining agreement. Our reading accorded with the ICC's and "ma[de] sense of the consolidation provisions," 499 U. S., at 132: "If § 11341(a) did not apply

The ADA, as we recognized in *Morales,* 504 U. S., at 378, was designed to promote "maximum reliance on competitive market forces." 49 U. S. C. App. § 1302(a)(4). Market efficiency requires effective means to enforce private agreements. See Farber, Contract Law and Modern Economic Theory, 78 Nw. U. L. Rev. 303, 315 (1983) (remedy for breach of contract "is necessary in order to ensure economic efficiency"); R. Posner, Economic Analysis of Law 90–91 (4th ed. 1992) (legal enforcement of contracts is more efficient than a purely voluntary system). As stated by the United States: "The stability and efficiency of the market depend fundamentally on the enforcement of agreements freely made, based on needs perceived by the contracting parties at the time." Brief for United States as *Amicus Curiae* 23. That reality is key to sensible construction of the ADA.

The FAA's text, we note, presupposes the vitality of contracts governing transportation by air carriers. Section 411(b), 49 U. S. C. App. § 1381(b), thus authorizes airlines to "incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage" to the extent authorized by the DOT. And the DOT's regulations contemplate that, upon the January 1, 1983, termination of domestic tariffs, "ticket contracts" ordinarily would be enforceable under "the contract law of the States." 47 Fed. Reg. 52129 (1982). Correspondingly, the DOT requires carriers to give passengers written notice of the time period within which they may "bring an action against the carrier for its acts." 14 CFR § 253.5(b)(2) (1994).

American does not suggest that its contracts lack legal force. American sees the DOT, however, as the exclusively competent monitor of the airline's undertakings. American

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to bargaining agreements . . . , rail carrier consolidations would be difficult, if not impossible, to achieve," *id.*, at 133. Similarly in this case, our reading of the statutory formulation accords with that of the superintending agency, here, the DOT, and is necessary to make sense of the statute as a whole.

points to the Department's authority to require any airline, in conjunction with its certification, to file a performance bond conditioned on the airline's "making appropriate compensation . . . , as prescribed by the [Department], for failure . . . to perform air transportation services in accordance with agreements therefor." FAA § 401(q)(2), 49 U. S. C. App. § 1371(q)(2).[7] But neither the DOT nor its predecessor, the CAB, has ever construed or applied this provision to displace courts as adjudicators in air carrier contract disputes. Instead, these agencies have read the provision to charge them with a less taxing task: In passing on air carrier fitness under FAA § 401(d), 49 U. S. C. App. § 1371(d)(1), the DOT and the CAB have used their performance bond authority to ensure that, when a carrier's financial fitness is marginal, funds will be available to compensate customers if the carrier goes under before providing already-paid-for services. See, *e. g.*, *U. S. Bahamas Service Investigation*, CAB Order 79–11–116, p. 3, 84 CAB Reports 73, 75 (1979) ("We . . . find that Southeast [Airlines] is fit to provide scheduled foreign air transportation. However, because of Southeast's current financial condition its operations present an unacceptable risk of financial loss to consumers. Therefore, we shall require the carrier . . . to procure and maintain a bond for the protection of passengers who have paid for transportation not yet performed.").

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[7] The preceding subsection, FAA § 401(q)(1), 49 U. S. C. App. § 1371(q)(1), requires an air carrier to have insurance, in an amount prescribed by the DOT, to cover claims for personal injuries and property losses "resulting from the operation or maintenance of aircraft." See Brief for United States as *Amicus Curiae* 19–20, and n. 12. American does not urge that the ADA preempts personal injury claims relating to airline operations. See Tr. of Oral Arg. 4 (acknowledgment by counsel for petitioner that "safety claims," for example, a negligence claim arising out of a plane crash, "would generally not be preempted"); Brief for United States as *Amicus Curiae* 20, n. 12 ("It is . . . unlikely that Section 1305(a)(1) preempts safety-related personal-injury claims relating to airline operations.").

The United States maintains that the DOT has neither the authority nor the apparatus required to superintend a contract dispute resolution regime. See Brief for United States as *Amicus Curiae* 22. Prior to airline deregulation, the CAB set rates, routes, and services through a cumbersome administrative process of applications and approvals. 72 Stat. 731. When Congress dismantled that regime, the United States emphasizes, the lawmakers indicated no intention to establish, simultaneously, a new administrative process for DOT adjudication of private contract disputes. See Brief for United States as *Amicus Curiae* 22. We agree.

Nor is it plausible that Congress meant to channel into federal courts the business of resolving, pursuant to judicially fashioned federal common law, the range of contract claims relating to airline rates, routes, or services. The ADA contains no hint of such a role for the federal courts. In this regard, the ADA contrasts markedly with the ERISA, which does channel civil actions into federal courts, see ERISA §§ 502(a), (e), 29 U. S. C. §§ 1132(a), (e), under a comprehensive scheme, detailed in the legislation, designed to promote "prompt and fair claims settlement." *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 54 (1987); see *Ingersoll-Rand Co.* v. *McClendon,* 498 U. S. 133, 143–145 (1990) (finding ERISA's comprehensive civil enforcement scheme a "special feature" supporting preemption of common-law wrongful discharge claims).

The conclusion that the ADA permits state-law-based court adjudication of routine breach-of-contract claims also makes sense of Congress' retention of the FAA's saving clause, § 1106, 49 U. S. C. App. § 1506 (preserving "the remedies now existing at common law or by statute"). The ADA's preemption clause, § 1305(a)(1), read together with the FAA's saving clause, stops States from imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself

stipulated. This distinction between what the State dictates and what the airline itself undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement.[8]

American suggests that plaintiffs' breach-of-contract and Consumer Fraud Act claims differ only in their labels, so that if Fraud Act claims are preempted, contract claims must be preempted as well. See Reply Brief 6. But a breach of contract, without more, "does not amount to a cause of action cognizable under the [Consumer Fraud] Act and the Act should not apply to simple breach of contract claims." *Golembiewski* v. *Hallberg Ins. Agency, Inc.*, 262 Ill. App. 3d 1082, 1093, 635 N. E. 2d 452, 460 (1st Dist. 1994). The basis for a contract action is the parties' agreement; to succeed under the consumer protection law, one must show not necessarily an agreement, but in all cases, an unfair or deceptive practice.

III

American ultimately argues that even under the position on preemption advanced by the United States—the one we adopt—plaintiffs' claims must fail because they "inescapably depend on state policies that are independent of the intent of the parties." Reply Brief 3. "The state court cannot reach the merits," American contends, "unless it first invalidates or limits [American's] express reservation of the right

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[8] The United States notes in this regard that "[s]ome state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties." Brief for United States as *Amicus Curiae* 28. Because contract law is not at its core "diverse, nonuniform, and confusing," *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 529 (1992) (plurality opinion), we see no large risk of nonuniform adjudication inherent in "[s]tate-court enforcement of the terms of a uniform agreement prepared by an airline and entered into with its passengers nationwide." Brief for United States as *Amicus Curiae* 27.

to change AAdvantage Program rules contained in AAdvantage contracts." *Ibid.*

American's argument is unpersuasive, for it assumes the answer to the very contract construction issue on which plaintiffs' claims turn: Did American, by contract, reserve the right to change the value of already accumulated mileage credits, or only to change the rules governing credits earned from and after the date of the change? See Brief for Respondents 5 (plaintiffs recognize that American "reserved the right to restrict, suspend, or otherwise alter aspects of the Program prospectively," but maintain that American "never reserved the right to retroactively diminish the value of the credits previously earned by members"). That question of contract interpretation has not yet had a full airing, and we intimate no view on its resolution.

Responding to our colleagues' diverse opinions dissenting in part, we add a final note. This case presents two issues that run all through the law. First, who decides (here, courts or the DOT, the latter lacking contract dispute resolution resources for the task)? On this question, all agree to this extent: None of the opinions in this case would foist on the DOT work Congress has neither instructed nor funded the Department to do. Second, where is it proper to draw the line (here, between what the ADA preempts, and what it leaves to private ordering, backed by judicial enforcement)? JUSTICE STEVENS reads our *Morales* decision to demand only minimal preemption; in contrast, JUSTICE O'CONNOR reads the same case to mandate total preemption.[9] The middle course we adopt seems to us best calculated to carry out the congressional design; it also bears the approval of the statute's experienced administrator, the DOT. And while we adhere to our holding in *Morales,* we do not overlook that in our system of adjudication, principles seldom can

[9] JUSTICE O'CONNOR's "all is pre-empted" position leaves room for personal injury claims, but only by classifying them as matters not "relating to [air carrier] services." See *post,* at 242–243.

be settled "on the basis of one or two cases, but require a closer working out." Pound, Survey of the Conference Problems, 14 U. Cin. L. Rev. 324, 339 (1940) (Conference on the Status of the Rule of Judicial Precedent).

* * *

For the reasons stated, the judgment of the Illinois Supreme Court is affirmed in part and reversed in part, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SCALIA took no part in the decision of the case.

JUSTICE STEVENS, concurring in part and dissenting in part.

Although I agree with the majority that the Airline Deregulation Act of 1978 (ADA) does not pre-empt respondents' breach-of-contract claims, I do not agree with the Court's disposition of their consumer-fraud claims. In my opinion, private tort actions based on common-law negligence or fraud, or on a statutory prohibition against fraud, are not pre-empted. Under the broad (and in my opinion incorrect[1]) interpretation of the words "law . . . relating to rates, routes, or services" that the Court adopted in *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374 (1992), direct state regulation of airline advertising is pre-empted; but I would not extend the holding of that case to embrace the private claims that respondents assert in this case.

Unlike the National Association of Attorneys General (NAAG) guidelines reviewed in *Morales*, the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) does not instruct the airlines about how they can market their services. Instead, it merely requires

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[1] See *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 419–427 (1992) (dissenting opinion).

all commercial enterprises—airlines included—to refrain from defrauding their customers. The *Morales* opinion said nothing about pre-empting general state laws prohibiting fraud. The majority's extension of the ADA's pre-emptive reach from airline-specific advertising standards to a general background rule of private conduct represents an alarming enlargement of *Morales*' holding.

I see no reason why a state law requiring an airline to honor its contractual commitments is any less a law relating to its rates and services than is a state law imposing a "duty not to make false statements of material fact or to conceal such facts." *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 528 (1992) (finding similar claim not to be pre-empted under Federal Cigarette Labeling and Advertising Act). In this case, the two claims are grounded upon the exact same conduct and would presumably have an identical impact upon American's rates, routes, and services. The majority correctly finds that Congress did not intend to pre-empt a claim that an airline breached a private agreement. I see no reason why the ADA should pre-empt a claim that the airline defrauded its customers in the making and performance of that very same agreement.

I would analogize the Consumer Fraud Act to a codification of common-law negligence rules. Under ordinary tort principles, every person has a duty to exercise reasonable care toward all other persons with whom he comes into contact. Presumably, if an airline were negligent in a way that somehow affected its rates, routes, or services,[2] and the victim of the airline's negligence were to sue in state court, the majority would not hold all common-law negligence rules to be pre-empted by the ADA. See *ante,* at 231, n. 7. Like contract principles, the standard of ordinary care is a general

[2] Indeed, every judgment against an airline will have some effect on rates, routes, or services, at least at the margin. In response to adverse judgments, airlines may have to raise rates, or curtail routes or services, to make up for lost income.

background rule against which all individuals order their affairs. Surely Congress did not intend to give airlines free rein to commit negligent acts subject only to the supervision of the Department of Transportation, any more than it meant to allow airlines to breach contracts with impunity. See *ante*, at 230–233. And, if judge-made duties are not pre-empted, it would make little sense to find pre-emption of identical rules codified by the state legislature. The duty imposed by the Consumer Fraud Act is to refrain from committing fraud in commercial dealings—it is "the duty not to deceive." *Cipollone*, 505 U. S., at 529. This is neither a novel nor a controversial proscription. It falls no more heavily upon airlines than upon any other business. It is no more or less a state-imposed "public policy" than a negligence rule. In sum, I see no difference between the duty to refrain from deception and the duty of reasonable care, and I see no meaningful difference between the enforcement of either duty and the enforcement of a private agreement.

The majority's extension of *Morales* is particularly untenable in light of the interpretive presumption against pre-emption. As in *Cipollone*, I believe there is insufficient evidence of congressional intent to supersede laws of general applicability to justify a finding that the ADA pre-empts either the contract or the fraud claim. *Cipollone*, 505 U. S., at 525–530; see also *Morales*, 504 U. S., at 419–421 (STEVENS, J., dissenting) (discussing presumption against pre-emption as an incident of federalism). Indeed, the presumption against pre-emption is especially appropriate to the ADA because Congress retained the "saving clause" preserving state "remedies now existing at common law or by statute." 49 U. S. C. App. § 1506.

Accordingly, while I join the Court's disposition of the breach-of-contract claims,[3] I would affirm the entire judgment of the Supreme Court of Illinois.

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[3] Accordingly, I join Part I, except for the last paragraph, and Part II–B of the Court's opinion.

JUSTICE O'CONNOR, with whom JUSTICE THOMAS joins as to all but Part I–B, concurring in the judgment in part and dissenting in part.

In permitting respondents' contract action to go forward, the Court arrives at what might be a reasonable policy judgment as to when state law actions against airlines should be pre-empted if we were free to legislate it. It is not, however, consistent with our controlling precedents, and it requires some questionable assumptions about the nature of contract law. I would hold that none of respondents' actions may proceed.

I

A

The Airline Deregulation Act of 1978 (ADA) says that "no State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier." 49 U. S. C. App. § 1305(a)(1).[1] We considered the scope of that provision in *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374 (1992). We noted the similarity of § 1305's language to the pre-emption provision in ERISA, 29 U. S. C. § 1144(a), and said that, like ERISA's § 1144, § 1305's words "express a broad pre-emptive purpose." 504 U. S., at 383. We concluded that "State enforcement actions having a connection with, or reference to, airline 'rates, routes, or services' are pre-empted." *Id.*, at 384.

Applying *Morales* to this case, I agree with the Court that respondents' consumer fraud and contract claims are "related to" airline "rates" and "services." See *ante*, at 226. The Court says, however, that judicial enforcement of a contract's

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[1] Congress has recently amended this statute to read: "[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U. S. C. § 41713(b)(1) (1994 ed.). Congress intended this amendment to be "without substantive change." See Pub. L. 103–272, § 1(a), 108 Stat. 745.

terms, in accordance with state contract law, does not amount to a "State . . . enforc[ing] any law," § 1305, but instead is simply a State "hold[ing] parties to their agreemen[t]." See *ante,* at 229, and n. 5. It therefore concludes that § 1305 does not apply to respondents' contract actions. I cannot agree with that conclusion.

I do not understand the Court to say that a State only "enforces" its "law" when some state employee (*e. g.,* an attorney general, or a judge) orders someone to do something. If that were the meaning of "enforce" in this context, then a diversity action brought by a private party under state law in federal court would never be subject to § 1305 pre-emption, because no state employee is involved, whereas the same action might be pre-empted in state court. That would make little sense, and federal courts have routinely considered § 1305 in determining whether a particular state law claim is pre-empted. *E. g., Statland* v. *American Airlines, Inc.*, 998 F. 2d 539, 541–542 (CA7) (contract claim pre-empted), cert. denied, 510 U. S. 1012 (1993); *West* v. *Northwest Airlines, Inc.*, 995 F. 2d 148, 151 (CA9 1993) (tort claim for punitive damages pre-empted), cert. denied, 510 U. S. 1111 (1994); *Cannava* v. *USAir, Inc.*, No. 91–30003–F, 1993 WL 565341, *6 (D. Mass., Jan. 7, 1993) (tort and contract claims pre-empted). Consequently, one must read "no State . . . shall . . . enforce any law" to mean that *no one* may enforce state law against an airline when the "enforcement actio[n] ha[s] a connection with, or reference to, airline 'rates, routes, or services.'" *Morales, supra,* at 384. This explains the Court's conclusion, with which I agree, that private parties such as respondents may not enforce the Illinois consumer fraud law against petitioner in an action whose subject matter relates to airline rates and services. *Ante,* at 228.

As I read § 1305 and *Morales,* however, respondents' contract claims also must be pre-empted. The Court recognizes, *ante,* at 227, that the "guidelines" at issue in *Morales*

did not "'create any new laws or regulations' applying to the airline industry; rather, they claim[ed] to 'explain in detail how existing state laws apply to air fare advertising and frequent flyer programs.'" *Morales*, 504 U. S., at 379. Nonetheless, we stated our holding quite clearly: "We hold that the fare advertising provisions of the NAAG guidelines are pre-empted by [§ 1305]." *Id.*, at 391. How can it be that the guidelines, which did not themselves constitute "law," were nonetheless pre-empted by a statute whose coverage is limited to "laws" or other "provision[s] having the force and effect of law"? The answer is that in *Morales* we held that an action to invoke the State's coercive power against an airline, by means of a generally applicable law, when the subject matter of the action related to airline rates, would constitute "Stat[e] . . . enforce[ment]" of a "law . . . relating to rates, routes, or services." *Id.*, at 383 (internal quotation marks omitted). Accordingly, we held that § 1305 pre-empted the action. It is not the case, as JUSTICE STEVENS urges, that *Morales* was limited to "airline-specific advertising standards." *Ante*, at 236. We examined the content of those standards—which had no binding force on their own—only to ascertain whether they "related to" airline rates (and we thought they "quite obviously" did). *Morales*, *supra*, at 387. The only "laws" at issue in *Morales* were generally applicable consumer fraud statutes, not facially related to airlines, much like the law at issue in respondents' consumer fraud claims here.

The Court concludes, however, that § 1305 does *not* pre-empt enforcement, by means of generally applicable state law, of a private agreement relating to airline rates and services. I cannot distinguish this case from *Morales*. In both, the subject matter of the action (the guidelines in *Morales*, the contract here) relates to airline rates and services. In both, that subject matter has no legal force, except insofar as a generally applicable state law (a consumer fraud law in

Morales, state contract law here[2]) permits an aggrieved party to invoke the State's coercive power against someone refusing to comply with the subject matter's terms (the requirements of the guidelines in *Morales*, the terms of the contract here). *Morales*' conclusion that § 1305 pre-empts such an invocation is dispositive here, both of respondents' consumer fraud claims, and of their contract claims. The lower courts seem to agree; as far as I know, no court to have considered ADA pre-emption since we decided *Morales* has suggested that enforcement of state contract law does not fall within § 1305 if the necessary relation to airline rates, routes, or services exists. See, *e. g.*, *Statland* v. *American Airlines*, *supra*, at 541–542 (contract claims pre-empted); *West* v. *Northwest Airlines*, *supra*, at 151–152 (contract claims not pre-empted because "too tenuously connected" to airline rates or services); *Cannava* v. *USAir, Inc.*, *supra*, at *6 (contract claims pre-empted); *Schaefer* v. *Delta Airlines*, No. 92–1170–E(LSP), 1992 WL 558954, *2 (SD Cal., Sept. 18, 1992) (same); *Vail* v. *Pan Am Corp.*, 260 N. J. Super. 292, 299–300, 616 A. 2d 523, 526–527 (App. Div. 1992) (same); *El-Menshawy* v. *Egypt Air*, 276 N. J. Super. 121, 126, 647 A. 2d 491, 493 (Law Div. 1994) (same).

The Court argues that the words "law, rule, regulation, standard, or other provision" in § 1305 refer only to "'official, government-imposed policies, not the terms of a private contract.'" *Ante*, at 229, n. 5 (quoting Brief for United States as *Amicus Curiae* 17). To be sure, the terms of private contracts are not "laws," any more than the guidelines at issue in *Morales* were "laws." But contract law, and generally applicable consumer fraud statutes, *are* laws, and *Morales* held that § 1305 prevents enforcement of "any [state] law" against the airlines when the subject matter of the action

[2] See *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 130 (1991) ("A contract has no legal force apart from the law that acknowledges its binding character"), discussed *infra*, at 243–244.

"relates" to airline rates, routes, or services. Thus, where the terms of a private contract relate to airline rates and services, and those terms can only be enforced *through state law*, *Morales* is indistinguishable. As JUSTICE STEVENS persuasively argues, there is "no reason why a state law requiring an airline to honor its contractual commitments is any less a law relating to its rates and services than is a state law imposing a 'duty not to make false statements of material fact or to conceal such facts,'" *ante*, at 236.

As the Court recognizes, *ante*, at 234, n. 9, my view of *Morales* does not mean that personal injury claims against airlines are always pre-empted. Many cases decided since *Morales* have allowed personal injury claims to proceed, even though none has said that a State is not "enforcing" its "law" when it imposes tort liability on an airline. In those cases, courts have found the particular tort claims at issue not to "relate" to airline "services," much as we suggested in *Morales* that state laws against gambling and prostitution would be too tenuously related to airline services to be pre-empted, see *Morales*, *supra*, at 390. *E. g.*, *Hodges* v. *Delta Airlines, Inc.*, 4 F. 3d 350, 353–356 (CA5 1993) (arguing that "'services' is not coextensive with airline 'safety,'" so safety-related tort claim should not be pre-empted; urging en banc review to bring Circuit precedent into conformity with that view), rehearing en banc granted, 12 F. 3d 426 (1994); *Public Health Trust* v. *Lake Aircraft, Inc.*, 992 F. 2d 291, 294–295 (CA11 1993) (tort claim for defective aircraft design not pre-empted because not related to airline services); *Cleveland* v. *Piper Aircraft Corp.*, 985 F. 2d 1438, 1443, and n. 11, 1444, n. 13 (CA10) (same), cert. denied, 510 U. S. 908 (1993); *Stagl* v. *Delta Air Lines, Inc.*, 849 F. Supp. 179, 182 (EDNY 1994) (tort claim against airline for personal injury not pre-empted because not related to airline "services" within the meaning of § 1305); *Curley* v. *American Airlines, Inc.*, 846 F. Supp. 280, 284 (SDNY 1994) (same); *Bayne* v. *Adventure Tours USA, Inc.*, 841 F. Supp. 206 (ND Tex. 1994)

(same); *Fenn* v. *American Airlines, Inc.*, 839 F. Supp. 1218, 1222–1223 (SD Miss. 1993) (same); *Chouest* v. *American Airlines, Inc.*, 839 F. Supp. 412, 416–417 (ED La. 1993) (same); *O'Hern* v. *Delta Airlines, Inc.*, 838 F. Supp. 1264, 1267 (ND Ill. 1993) (same); *In re Air Disaster*, 819 F. Supp. 1352, 1363 (ED Mich. 1993) (same); *Butcher* v. *Houston*, 813 F. Supp. 515, 518 (SD Tex. 1993) (same).

Our recent decision in *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117 (1991), is relevant. The question in that case was whether a rail carrier's statutory exemption from "all other law," which we read to mean "*all law* as necessary to carry out an ICC-approved transaction," *id.*, at 129, exempted the carrier from contractually imposed obligations. We held that it did. We noted that "[a] contract depends on a regime of common and statutory law for its effectiveness and enforcement," *id.*, at 129–130, that "[a] contract has no legal force apart from the law that acknowledges its binding character," *id.*, at 130, and that "'[l]aws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms," *ibid.* (quoting *Farmers and Merchants Bank of Monroe* v. *Federal Reserve Bank of Richmond*, 262 U. S. 649, 660 (1923)). Accordingly, we concluded that "the exemption . . . from 'all other law' effects an override of contractual obligations . . . by suspending application of the law that makes the contract binding." 499 U. S., at 130. In so concluding, we specifically rejected the Court of Appeals' views that the "all other law" exemption "[n]owhere . . . sa[id] that the ICC may also override contracts," and that it did not exempt the carrier from "'all legal obstacles.'" *Brotherhood of R. Carmen* v. *ICC*, 880 F. 2d 562, 567 (CADC 1989); see *Norfolk & Western*, *supra*, at 133–134.

The Court does not dispute this reading of *Norfolk & Western*, which in my view makes clear that a State is enforcing its "law" when it brings its coercive power to bear

on a party who has violated a contractual obligation. We reiterated in *Norfolk & Western* that "[t]he obligation of a contract is the law which binds the parties to perform their agreement." 499 U. S., at 129 (internal quotation marks omitted); see also *Sturges* v. *Crowninshield*, 4 Wheat. 122, 197 (1819) (Marshall, C. J.) ("A contract is an agreement, in which a party undertakes to do, or not to do, a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract"). We therefore read the words "all other law" in the statutory exemption broadly enough to "suspen[d] application of the law that makes the contract binding." *Norfolk & Western*, *supra*, at 130. I would give the words "any law" in § 1305 a similar reading.

As support for its theory, the Court cites only a statement in the plurality opinion in *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504 (1992); see *ante*, at 229. The *Cipollone* plurality said that "a common-law remedy for a contractual commitment voluntarily undertaken should not be regarded as a 'requirement . . . *imposed under State law*' within the meaning of § 5(b)." 505 U. S., at 526. But the plurality elaborated on this point in a footnote. In rejecting the argument that specific warranty obligations are "imposed under State law," the plurality agreed that pre-emption might be required "if the Act pre-empted '*liability*' imposed under state law . . . ; but instead the Act expressly pre-empts only a '*requirement or prohibition*' imposed under state law." *Id.*, at 526, n. 24. It agreed that contractual requirements are "only enforceable under state law," but argued that those requirements are "'imposed' by the contracting party upon itself." *Ibid.* The plurality thus distinguished the situation where substantive requirements contained in a contract are enforceable only under state law from the situation where state law *itself* imposes substantive requirements, and concluded that the statute before it pre-empted only the latter kind of state law. Here, as in *Cipollone*, the requirements

at issue are contained in a contract, and have no legal force except insofar as state law makes them enforceable. But we concluded in *Morales* that § 1305 *does* pre-empt state law in those circumstances, unlike the statute in *Cipollone*. The difference between this case and *Cipollone* is the very different language in the two pre-emption statutes.

The Court also concludes that § 1305 only "stops States from imposing their own substantive standards with respect to rates, routes, or services," *ante*, at 232. In *Morales*, however, we specifically rejected an interpretation of § 1305 that would have rewritten it to read: No State shall "'*regulate* rates, routes, and services.'" See *Morales*, 504 U. S., at 385–386. There is little distinction between "regulating rates, routes, and services" and "imposing substantive standards with respect to rates, routes, and services," and the Court does not explain how *Morales*' rejection of the former allows it now to adopt the latter. The Court relies on the statute's "saving clause," 49 U. S. C. App. § 1506, see *ante*, at 232, but we said in *Morales* that "[a] general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision," particularly where, as here, "the 'saving' clause is a relic of the pre-ADA/no pre-emption regime." *Morales*, 504 U. S., at 385.

Without question, *Morales* gave § 1305 a broad pre-emptive sweep. The dissent in that case argued that such a broad interpretation went too far by pre-empting areas of traditional state regulation without a clear expression of congressional intent to do so. *Id.*, at 421–424 (Stevens, J., dissenting); see also *ante*, at 235, 237 (Stevens, J., concurring in part and dissenting in part). But the Court rejected the dissent's reading, holding instead that § 1305's language demonstrated a clear "statutory intent" to expressly pre-empt generally applicable state law as long as the "particularized application" of that law relates to airline rates, routes, or services. *Morales*, *supra*, at 383, 386, and n. 2.

B

Congress has recently revisited § 1305, and said that it "d[id] not intend to alter the broad preemption interpretation adopted by the United States Supreme Court in *Morales*," H. R. Conf. Rep. No. 103–677, p. 83 (1994). If the Court nonetheless believes that *Morales* misread § 1305, the proper course of action would be to overrule that case, despite Congress' apparent approval of it. The Court's reading of § 1305 is not, in my view, a "'closer working out'" of ADA pre-emption, see *ante*, at 235; rather, it is a new approach that does not square with our decisions in *Morales* and *Norfolk & Western*.

Stare decisis has "special force" in the area of statutory interpretation, see *Allied-Bruce Terminix Cos.* v. *Dobson*, *post*, at 284 (O'CONNOR, J., concurring) (internal quotation marks omitted). It sometimes requires adherence to a wrongly decided precedent. *Post*, at 283–284. Here, however, Congress apparently does not think that our decision in *Morales* was wrong, nor do I. In the absence of any "'special justification,'" *post*, at 284 (quoting *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984)), for departing from *Morales*, I would recognize the import of *Morales* and *Norfolk & Western* here, and render the decision that the language of § 1305, in light of those cases, compels. If, at the end of the day, Congress believes we have erred in interpreting § 1305, it remains free to correct our mistake.

II

Our decisions in *Morales* and *Norfolk & Western* suffice to decide this case along the lines I have described. In addition, however, I disagree with the Court's view that courts can realistically be confined, "in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Ante*, at 233. When they are so confined, the Court says, courts are "simply hold[ing] parties to their agreements,"

and are not "enforcing" any "law," *ante,* at 229. The Court also says that "'[s]ome state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties.'" *Ante,* at 233, n. 8 (quoting Brief for United States as *Amicus Curiae* 28).

The doctrinal underpinnings of the notion that judicial enforcement of the "intent of the parties" can be divorced from a State's "public policy" have been in serious question for many years. As one author wrote some time ago:

> "A contract, therefore, between two or more individuals cannot be said to be generally devoid of all public interest. If it be of no interest, why enforce it? For note that in enforcing contracts, the government does not merely allow two individuals to do what they have found pleasant in their eyes. Enforcement, in fact, puts the machinery of the law in the service of one party against the other. When that is worthwhile and how that should be done are important questions of public policy. . . . [T]he notion that in enforcing contracts the state is only giving effect to the will of the parties rests upon an . . . untenable theory as to what the enforcement of contracts involves." Cohen, The Basis of Contract, 46 Harv. L. Rev. 553, 562 (1933).

More recent authors have expressed similar views. See, *e. g.,* Braucher, Contract Versus Contractarianism: The Regulatory Role of Contract Law, 47 Wash. & Lee L. Rev. 697, 699 (1990) ("Mediating between private ordering and social concerns, contract is a socioeconomic institution that requires an array of normative choices. . . . The questions addressed by contract law concern *what* social norms to use in the enforcement of contracts, not whether social norms will be used at all"). Contract law is a set of policy judgments concerning how to decide the meaning of private agreements, which private agreements should be legally enforceable, and

what remedy to afford for their breach. The Court fails to recognize that when a State decides to force parties to comply with a contract, it does so only because it is satisfied that state policy, as expressed in its contract law, will be advanced by that decision.

Thus, the Court's allowance that "'[s]ome state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties,'" *ante*, at 233, n. 8 (quoting Brief for United States as *Amicus Curiae* 28), threatens to swallow all of contract law. For example, the Court observes that on remand, the state court will be required to decide whether petitioner reserved the right to alter the terms of its frequent flyer program retroactively, or instead only prospectively. *Ante*, at 234. The court will presumably decide that question by looking to the usual "rules" of contract interpretation to decide what the contract's language means. If the court finds the language to be ambiguous, it might invoke the familiar rule that the contract should be construed against its drafter, and thus that respondents should receive the benefit of the doubt. See 2 E. Farnsworth, Farnsworth on Contracts § 7.11, pp. 265–268 (1990) (hereinafter Farnsworth). That rule of contract construction is not essential to a functional contract system. It is a policy choice that *our* contract system has made. Other such policy choices are that courts should not enforce agreements unsupported by consideration, see 1 Farnsworth § 2.5; but cf. J. Barton, J. Gibbs, V. Li, & J. Merryman, Law in Radically Different Cultures 579 (1983) (other legal systems enforce certain agreements not supported by consideration); that courts should supply "reasonable" terms to fill "gaps" in incomplete contracts, see 2 Farnsworth §§ 7.15–7.17; the method by which courts should decide what terms to supply, see C. Fried, Contract as Promise 60, 69–73 (1981); Charny, Hypothetical Bargains: The Normative Structure of Contract Interpretation, 89 Mich. L. Rev. 1815, 1816, 1820–1823

(1991); Ayres & Gertner, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, 99 Yale L. J. 87, 91 (1989) (all suggesting different policy considerations that should inform how courts fill contractual gaps); and that a breach of contract entitles the aggrieved party to expectation damages most of the time, but specific performance only rarely, see 3 Farnsworth, ch. 12; but cf. R. David & J. Brierley, Major Legal Systems in the World Today 302 (1985) (former Soviet Union routinely awarded specific performance). If courts are not permitted to look to these aspects of contract law in airline-related actions, they will find the cases difficult to decide.

Even the doctrine of unconscionability, which the United States suggests as an aspect of contract law that "might well be preempted" because it "seek[s] to effectuate the State's public policies, rather than the intent of the parties," Brief for United States as *Amicus Curiae* 28, cannot be so neatly categorized. On the one hand, refusing to enforce a contract because it is "unfair" seems quintessentially policy oriented. But on the other, "[p]rocedural unconscionability is broadly conceived to encompass not only the employment of sharp practices and the use of fine print and convoluted language, but a lack of understanding and an inequality of bargaining power." 1 Farnsworth § 4.28, at 506–507 (footnotes omitted). In other words, a determination that a contract is "unconscionable" may in fact be a determination that one party did not intend to agree to the terms of the contract. Thus, the unconscionability doctrine, far from being a purely "policy-oriented" doctrine that courts impose over the will of the parties, instead demonstrates that state public policy cannot easily be separated from the methods by which courts are to decide what the parties "intended."

"[T]he law itself imposes contractual liability on the basis of a complex of moral, political, and social judgments." Fried, *supra,* at 69. The rules laid down by contract law for determining what the parties intended an agreement to

mean, whether that agreement is legally enforceable, and what relief an aggrieved party should receive, are the end result of those judgments. Our legal system has decided to allow private parties to invoke the coercive power of the State in the effort to enforce those (and only those) private agreements that conform to rules set by those state policies known collectively as "contract law." Courts cannot enforce private agreements without reference to those policies, because those policies define the role of courts in deciding disputes concerning private agreements.

For these reasons, I would reverse the judgment of the Illinois Supreme Court.

Syllabus

NATIONSBANK OF NORTH CAROLINA, N. A., ET AL. *v.* VARIABLE ANNUITY LIFE INSURANCE CO. ET AL.

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

No. 93–1612. Argued December 7, 1994—Decided January 18, 1995*

Petitioner national bank and its brokerage subsidiary applied to the Comptroller of the Currency, charged by Congress with superintendence of national banks, to allow the subsidiary to act as an agent in the sale of annuities. Under the proposed plan, bank customers could purchase a "variable annuity"—which invests payments in a designated way and yields income that varies with investment performance—a "fixed" annuity—which yields income that does not vary—or a hybrid account. Granting the application, the Comptroller typed the annuity sales "incidental" to "the business of banking" under the National Bank Act, 12 U. S. C. § 24 Seventh. The Comptroller further concluded that annuities are not "insurance" within the meaning of § 92; that provision, by expressly authorizing banks in towns of no more than 5,000 people to sell insurance, arguably implies that banks in larger towns may not sell insurance. Respondent Variable Annuity Life Insurance Co. (VALIC), which sells annuities, filed a suit challenging the Comptroller's decision. The District Court upheld the Comptroller's conclusions as a permissible reading of the Act. Reversing the District Court's judgment, the Court of Appeals held that § 92 bars banks not located in small towns from selling insurance, and rejected the Comptroller's conclusion that annuities are not insurance under § 92.

Held: The Comptroller's determination that national banks may serve as agents in the sale of annuities is a reasonable construction of the Act and therefore warrants judicial deference. Pp. 256–264.

(a) If a statute is silent or ambiguous with respect to the precise question at issue, the reviewing court must determine whether the answer reached by the agency charged with the statute's enforcement is based on a permissible construction. If an expert administrator's reading fills a gap or defines a term in a way that is reasonable in light of

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*Together with No. 93–1613, *Ludwig, Comptroller of the Currency, et al.* v. *Variable Annuity Life Insurance Co. et al.*, also on certiorari to the same court.

Congress' revealed design, the administrator's judgment is given controlling weight. Pp. 256–257.

(b) The Court respects as reasonable the Comptroller's conclusion that brokerage of annuities is an "incidental powe[r] . . . necessary to carry on the business of banking" under § 24 Seventh. In interpreting "the business of banking" to include brokerage of financial investment instruments, the Comptroller better comprehends the Act's terms than does VALIC, whose reading confines national banks to the five activities listed in § 24 Seventh's first sentence and endeavors incidental thereto: discounting and negotiating evidences of debt; receiving deposits; buying and selling money; making loans; and obtaining, issuing, and circulating notes. The section's second sentence, which limits banks' "dealing in securities," recognizes that banks otherwise have the authority the sentence addresses, even though that authority is not specifically enumerated; Congress thus evidenced its intent to accord banks authority "to carry on the business of banking" through customer services not circumscribed by the five listed activities. The Comptroller therefore has discretion, within reasonable bounds, to permit banking activities beyond those the statute sets forth as exemplary. Here, the Comptroller reasonably concluded that the authority to sell annuities qualifies as part of the authority to purchase and sell financial investment instruments. Modern annuities, though more sophisticated than the standard savings bank deposits of old, answer essentially the same need. By providing customers with the opportunity to invest in one or more annuity options, banks are essentially offering financial investment instruments of the kind congressional authorization permits them to broker. Pp. 257–260.

(c) The Court further defers to the Comptroller's determination that annuities are properly classified as investments, not "insurance" within § 92's meaning. The Comptroller's classification of annuities, based on the tax deferral and investment features that distinguish them from insurance, is at least a reasonable interpretation of the controlling legislation. A key feature of insurance is that it indemnifies loss. As the Comptroller observes, annuities serve an important investment purpose and are functionally similar to other investments that banks typically sell. And though fixed annuities more closely resemble insurance than do variable annuities, fixed annuities too have significant investment features and are functionally similar to debt instruments. Moreover, mindful that fixed annuities are often packaged with variable annuities, the Comptroller reasonably chose to classify the two together. In light of the foregoing, the Court need not reach the question whether § 92, by negative implication, precludes

Syllabus

national banks in places more populous than 5,000 from selling insurance. Pp. 260–264.

998 F. 2d 1295, reversed.

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

Edward C. DuMont argued the cause for petitioners in No. 93–1613. With him on the briefs were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Bender*, *Mark B. Stern*, *Jacob M. Lewis*, *Julie L. Williams*, *L. Robert Griffin*, and *Yvonne D. McIntire*. *Steven S. Rosenthal* argued the cause for petitioners in No. 93–1612. With him on the briefs were *Robert M. Kurucza* and *Robert G. Ballen*.

David Overlock Stewart argued the cause for respondent in both cases. With him on the brief were *Alan G. Priest*, *Raymond C. Ortman, Jr.*, and *William A. Wilson*.†

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†Briefs of *amici curiae* urging reversal were filed for the American Bankers Association et al. by *John J. Gill III*, *Michael F. Crotty*, *James T. McIntyre*, *Richard M. Whiting*, and *David L. Glass;* for the Conference of State Bank Supervisors et al. by *David W. Roderer*, *Eric L. Hirschhorn*, *Donn C. Meindertsma*, *J. Thomas Cardwell*, *Leonard J. Rubin*, and *M. Brooks Senn;* and for the New York Clearing House Association by *John L. Warden*, *Michael M. Wiseman*, *Theodore Edelman*, and *Norman R. Nelson*.

Briefs of *amici curiae* urging affirmance were filed for Tom Gallagher, Treasurer and Insurance Commissioner of Florida, et al. by *David J. Busch*, *Richard Blumenthal*, Attorney General of Connecticut, *pro se*, and *Mark F. Kohler*, Assistant Attorney General, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Gary L. Spaeth*, *Heidi Heitkamp*, Attorney General of North Dakota, *Jeffrey B. Pine*, Attorney General of Rhode Island, and *Maureen G. Glynn*, Special Assistant Attorney General; for the American Academy of Actuaries by *Lauren M. Bloom;* for the American Council of Life Insurance by *Gary E. Hughes*, *Allen R. Caskie*, and *Phillip E. Stano;* for the American Land Title Association by *Sheldon E. Hochberg;* for the National Association of Insurance Commissioners by *Susan E. Martin* and *Ellen Dollase Wilcox;* and for the National Association of Life Underwriters et al. by *Ann M. Kappler* and *Scott A. Sinder*.

JUSTICE GINSBURG delivered the opinion of the Court.

These consolidated cases present the question whether national banks may serve as agents in the sale of annuities. The Comptroller of the Currency, charged by Congress with superintendence of national banks, determined that federal law permits such annuity sales as a service to bank customers. Specifically, the Comptroller considered the sales at issue "incidental" to "the business of banking" under the National Bank Act, Rev. Stat. § 5136, as amended, 12 U. S. C. § 24 Seventh (1988 ed. and Supp. V). The Comptroller further concluded that annuities are not "insurance" within the meaning of § 92; that provision, by expressly authorizing banks in towns of no more than 5,000 people to sell insurance, arguably implies that banks in larger towns may not sell insurance. The United States District Court for the Southern District of Texas upheld the Comptroller's conclusions as a permissible reading of the National Bank Act, but the United States Court of Appeals for the Fifth Circuit reversed. We are satisfied that the Comptroller's construction of the Act is reasonable and therefore warrants judicial deference. Accordingly, we reverse the judgment of the Court of Appeals.

I

Petitioner NationsBank of North Carolina, N. A., a national bank based in Charlotte, and its brokerage subsidiary sought permission from the Comptroller of the Currency, pursuant to 12 CFR § 5.34 (1994), for the brokerage subsidiary to act as an agent in the sale of annuities. Annuities are contracts under which the purchaser makes one or more premium payments to the issuer in exchange for a series of payments, which continue either for a fixed period or for the life of the purchaser or a designated beneficiary. When a purchaser invests in a "variable" annuity, the purchaser's money is invested in a designated way and payments to the purchaser vary with investment performance. In a classic "fixed" annuity, in contrast, payments do not vary. Under

the contracts NationsBank proposed to sell, purchasers could direct their payments to a variable, fixed, or hybrid account, and would be allowed periodically to modify their choice. The issuers would be various insurance companies. See Letter from J. Michael Shepherd, Senior Deputy Comptroller, to Robert M. Kurucza (Mar. 21, 1990), App. to Pet. for Cert. in No. 93–1612, pp. 35a–36a (Comptroller's Letter).

The Comptroller granted NationsBank's application. He concluded that national banks have authority to broker annuities within "the business of banking" under 12 U. S. C. § 24 Seventh. He further concluded that § 92, addressing insurance sales by banks in towns with no more than 5,000 people, did not impede his approval; for purposes of that provision, the Comptroller explained, annuities do not rank as "insurance." See Comptroller's Letter 41a–47a.

Respondent Variable Annuity Life Insurance Co. (VALIC), which sells annuities, challenged the Comptroller's decision. VALIC filed suit in the United States District Court for the Southern District of Texas seeking declaratory and injunctive relief pursuant to the Administrative Procedure Act, 5 U. S. C. § 706(2)(A), and 28 U. S. C. §§ 2201, 2202 (1988 ed. and Supp. V). The District Court granted summary judgment in favor of the Comptroller and NationsBank. *Variable Annuity Life Ins. Co.* v. *Clarke*, 786 F. Supp. 639 (1991). The United States Court of Appeals for the Fifth Circuit reversed. *Variable Annuity Life Ins. Co.* v. *Clarke*, 998 F. 2d 1295 (1993). Relying on its decision in *Saxon* v. *Georgia Assn. of Independent Ins. Agents, Inc.*, 399 F. 2d 1010 (1968), the Fifth Circuit first held that § 92 bars banks not located in small towns from selling insurance, and then rejected the Comptroller's view that annuities are not insurance for purposes of § 92. See 998 F. 2d, at 1298–1302.

Four judges dissented from the failure of the court to grant rehearing en banc. The dissenters maintained that the panel had not accorded due deference to the Comptroller's reasonable statutory interpretations. *Variable Annu-*

ity Life Ins. Co. v. *Clark[e]*, 13 F. 3d 833, 837–838 (CA5 1994).[1] We granted certiorari. 511 U. S. 1141 (1994).

II

A

Authorizing national banks to "carry on the business of banking," the National Bank Act provides that such banks shall have power—

> "To exercise . . . all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes . . . . The business of dealing in securities and stock by the [bank] shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the [bank] shall not underwrite any issue of securities or stock . . . ." 12 U. S. C. § 24 Seventh (1988 ed. and Supp. V).

As the administrator charged with supervision of the National Bank Act, see §§ 1, 26–27, 481, the Comptroller bears primary responsibility for surveillance of "the business of banking" authorized by § 24 Seventh. We have reiterated:

> "'It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute. The Comptroller of the Currency is charged with the enforcement of banking laws to an extent that warrants the invocation of this principle with

[1] The dissenters also observed that 6 of the court's 13 active judges were disqualified from participating in the case. 13 F. 3d, at 834.

> respect to his deliberative conclusions as to the meaning of these laws.'" *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388, 403–404 (1987) (quoting *Investment Company Institute* v. *Camp*, 401 U. S. 617, 626–627 (1971)).

Under the formulation now familiar, when we confront an expert administrator's statutory exposition, we inquire 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 so, "that is the end of the matter." *Ibid.* 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 administrator's reading fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design, we give the administrator's judgment "controlling weight." *Id.*, at 844.

In authorizing NationsBank to broker annuities, the Comptroller invokes the power of banks to "broker a wide variety of financial investment instruments," Comptroller's Letter 38a, which the Comptroller considers "part of [banks'] traditional role as financial intermediaries," *ibid.*, and therefore an "incidental powe[r] . . . necessary to carry on the business of banking." 12 U. S. C. § 24 Seventh; see also Interpretive Letter No. 494 (Dec. 20, 1989) (discussing features of financial investment instruments brokerage that bring this activity within the "business of banking") (cited in Comptroller's Letter 38a). The Comptroller construes the § 24 Seventh authorization of "incidental powers . . . necessary to carry on the business of banking" as an independent grant of authority; he reads the specific powers set forth thereafter as exemplary, not exclusive.

VALIC argues that the Comptroller's interpretation is contrary to the clear intent of Congress because the banking power on which the Comptroller relies—"broker[ing] financial investment instruments"—is not specified in § 24 Sev-

enth. Brief for Respondent 35–45. According to VALIC, the five specific activities listed in § 24 Seventh after the words "business of banking" are exclusive—banks are confined to these five activities and to endeavors incidental thereto. *Id.*, at 35–36. VALIC thus attributes no independent significance to the words "business of banking." We think the Comptroller better comprehends the Act's terms.

The second sentence of § 24 Seventh, in limiting banks' "dealing in securities," presupposes that banks have authority not circumscribed by the five specifically listed activities. Congress' insertion of the limitation decades after the Act's initial adoption makes sense only if banks already *had* authority to deal in securities, authority presumably encompassed within the "business of banking" language which dates from 1863. VALIC argues, however, that the limitation was imposed by the Glass-Steagall Act of 1933, and that the power Glass-Steagall presupposed was specifically granted in the McFadden Act of 1927. Brief for Respondent 46. While the statute's current wording derives from the Glass-Steagall Act, see Act of June 16, 1933, ch. 89, § 16, 48 Stat. 184, the earlier McFadden Act does not bolster VALIC's case, for that Act, too, *limited* an activity already part of the business national banks did. See Act of Feb. 25, 1927, § 2(b), 44 Stat. 1226 ("*Provided*, That the business of buying and selling investment securities shall hereinafter be limited to buying and selling without recourse . . . ."); see also *Clarke* v. *Securities Industry Assn.*, 479 U. S., at 407–408 (even before the McFadden Act, banks conducted securities transactions on a widespread basis); 2 F. Redlich, The Molding of American Banking: Men and Ideas, pt. 2, pp. 389–393 (1951) (describing securities activities of prominent early national banks).[2]

[2] We expressly hold that the "business of banking" is not limited to the enumerated powers in § 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enume-

B

As we have just explained, the Comptroller determined, in accord with the legislature's intent, that "the business of banking" described in § 24 Seventh covers brokerage of financial investment instruments, and is not confined to the examples specifically enumerated. He then reasonably concluded that the authority to sell annuities qualifies as part of, or incidental to, the business of banking. National banks, the Comptroller observed, are authorized to serve as agents for their customers in the purchase and sale of various financial investment instruments, Comptroller's Letter 38a,[3] and annuities are widely recognized as just such investment products. See D. Shapiro & T. Streiff, Annuities 7 (1992) (in contrast to life insurance, "[a]nnuities . . . are primarily investment products"); 1 J. Appleman & J. Appleman, Insurance Law and Practice § 84, p. 295 (1981) ("Annuity contracts must . . . be recognized as investments rather than as insurance.").

By making an initial payment in exchange for a future income stream, the customer is deferring consumption, setting aside money for retirement, future expenses, or a rainy day. For her, an annuity is like putting money in a bank account, a debt instrument, or a mutual fund. Offering bank accounts and acting as agent in the sale of debt instruments and mutual funds are familiar parts of the business of banking. See, *e. g.*, *Securities Industry Assn.* v. *Board of Governors, FRS*, 468 U. S. 207, 215 (1984) ("Banks long have arranged the purchase and sale of securities as an accommodation to their customers."); *First Nat. Bank of Hartford* v. *Hartford*, 273 U. S. 548, 559–560 (1927) (banks have authority

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rated. The exercise of the Comptroller's discretion, however, must be kept within reasonable bounds. Ventures distant from dealing in financial investment instruments—for example, operating a general travel agency—may exceed those bounds.

[3] The Comptroller referred to Interpretive Letter No. 494 (Dec. 20, 1989) (approving brokerage of agricultural, oil, and metals futures).

to sell mortgages and other debt instruments they have originated or acquired by discount).

In sum, modern annuities, though more sophisticated than the standard savings bank deposits of old, answer essentially the same need. By providing customers with the opportunity to invest in one or more annuity options, banks are essentially offering financial investment instruments of the kind congressional authorization permits them to broker. Hence, the Comptroller reasonably typed the permission NationsBank sought as an "incidental powe[r] . . . necessary to carry on the business of banking."[4]

III

A

In the alternative, VALIC argues that 12 U. S. C. § 92 (1988 ed., Supp. V) bars NationsBank from selling annuities as agent. That section provides:

> "In addition to the powers now vested by law in [national banks] any such [bank] located and doing business in any place the population of which does not exceed five thousand inhabitants . . . may . . . act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company . . . ."

The parties disagree about whether § 92, by negative implication, precludes national banks located in places more populous than 5,000 from selling insurance. We do not reach

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[4] Assuring that the brokerage in question would not deviate from traditional bank practices, the Comptroller specified that NationsBank "will act only as agent, . . . will not have a principal stake in annuity contracts and therefore will incur no interest rate or actuarial risks." Comptroller's Letter 48a.

this question because we accept the Comptroller's view that, for the purpose at hand, annuities are properly classified as investments, not "insurance."

Again, VALIC contends that the Comptroller's determination is contrary to the plain intent of Congress, or else is unreasonable. In support of its position that annuities are insurance, VALIC notes first that annuities traditionally have been sold by insurance companies. But the sale of a product by an insurance company does not inevitably render the product insurance. For example, insurance companies have long offered loans on the security of life insurance, see 3 Appleman & Appleman, Insurance Law and Practice § 1731, p. 562 (1967), but a loan does not thereby become insurance.

VALIC further asserts that most States have regulated annuities as insurance and that Congress intended to define insurance under § 92 by reference to state law. Treatment of annuities under state law, however, is contextual. States generally classify annuities as insurance when defining the powers of insurance companies and state insurance regulators. See, *e. g.*, 998 F. 2d, at 1300, n. 2 (citing statutes). But in diverse settings, States have resisted lump classification of annuities as insurance. See, *e. g.*, *In re New York State Assn. of Life Underwriters, Inc.* v. *New York State Banking Dept.*, 83 N. Y. 2d 353, 363, 632 N. E. 2d 876, 881 (1994) (rejecting "assertion that annuities are insurance which [state-chartered] banks are not authorized to sell," even though state insurance law "includes 'annuities' in its description of 'kinds of insurance authorized' "); *In re Estate of Rhodes*, 197 Misc. 232, 237, 94 N. Y. S. 2d 406, 411 (Surr. Ct. 1949) (annuity contracts do not qualify for New York estate tax exemption applicable to insurance); *Commonwealth* v. *Metropolitan Life Ins. Co.*, 254 Pa. 510, 513–516, 98 A. 1072, 1073 (1916) (annuities are not insurance for purposes of tax that insurance companies pay on insurance premiums received within

the State); *State ex rel. Equitable Life Assurance Soc. of United States* v. *Ham*, 54 Wyo. 148, 159, 88 P. 2d 484, 488 (1939) (same).

As our decisions underscore, a characterization fitting in certain contexts may be unsuitable in others. See, *e. g.*, *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932) ("meaning [of words] well may vary to meet the purposes of the law"; courts properly give words "the meaning which the legislature intended [they] should have in each instance"); cf. Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333, 337 (1933) ("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."). Moreover, the federal banking law does not plainly require automatic reference to state law here. The Comptroller has concluded that the federal regime is best served by classifying annuities according to their functional characteristics. Congress has not ruled out that course, see *Chevron*, 467 U. S., at 842; courts, therefore, have no cause to dictate to the Comptroller the state-law constraint VALIC espouses.

VALIC further argues that annuities functionally resemble life insurance because some annuities place mortality risk on the parties. Under a classic fixed annuity, the purchaser pays a sum certain and, in exchange, the issuer makes periodic payments throughout, but not beyond, the life of the purchaser. In pricing such annuities, issuers rely on actuarial assumptions about how long purchasers will live.

While cognizant of this similarity between annuities and insurance, the Comptroller points out that mortality risk is a less salient characteristic of contemporary products. Many annuities currently available, both fixed and variable, do not feature a life term. Instead they provide for payments over a term of years; if the purchaser dies before the term ends,

the balance is paid to the purchaser's estate. Moreover, the presence of mortality risk does not necessarily qualify an investment as "insurance" under § 92. For example, VALIC recognizes that a life interest in real property is not insurance, although it imposes a mortality risk on the purchaser. Tr. of Oral Arg. 42. Some conventional debt instruments similarly impose mortality risk. See Note, Reverse Annuity Mortgages and the Due-on-Sale Clause, 32 Stan. L. Rev. 143, 145–151 (1979).

B

VALIC also charges the Comptroller with inconsistency. As evidence, VALIC refers to a 1978 letter from a member of the Comptroller's staff describing annuity investments as insurance arrangements. Brief for Respondent 16–17; see Letter from Charles F. Byrd, Assistant Director, Legal Advisory Services Division, Office of the Comptroller of the Currency (June 16, 1978), App. to Brief in Opposition 1a–2a (Byrd Letter). We note, initially, that the proposal disfavored in the 1978 letter did not clearly involve a bank selling annuities as an agent, rather than as a principal. See Byrd Letter 1a ("[T]he bank would purchase a group annuity policy from an insurer and then sell annuity contracts as investments in trust accounts."). Furthermore, unlike the Comptroller's letter to NationsBank here, the 1978 letter does not purport to represent the Comptroller's position. Compare Byrd Letter 1a ("It is my opinion . . . ") with Comptroller's Letter 35a ("The OCC's legal position on this issue was announced in a [prior 1990 letter]. Since I find neither policy nor supervisory reasons to object to this proposal, the Subsidiary may proceed."). Finally, any change in the Comptroller's position might reduce, but would not eliminate, the deference we owe his reasoned determinations. See *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402, 417 (1993) (quoting *NLRB* v. *Iron Workers*, 434 U. S. 335, 351 (1978)).

The Comptroller's classification of annuities, based on the tax deferral and investment features that distinguish them

from insurance, in short, is at least reasonable. See Comptroller's Letter 44a. A key feature of insurance is that it indemnifies loss. See Black's Law Dictionary 802 (6th ed. 1990) (first definition of insurance is "contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils"). As the Comptroller observes, annuities serve an important investment purpose and are functionally similar to other investments that banks typically sell. See *supra*, at 259–260. And though fixed annuities more closely resemble insurance than do variable annuities, fixed annuities too have significant investment features and are functionally similar to debt instruments. Moreover, mindful that fixed annuities are often packaged with variable annuities, the Comptroller reasonably chose to classify the two together.

* * *

We respect as reasonable the Comptroller's conclusion that brokerage of annuities is an "incidental powe[r] . . . necessary to carry on the business of banking." We further defer to the Comptroller's reasonable determination that 12 U. S. C. § 92 is not implicated because annuities are not insurance within the meaning of that section. Accordingly, the judgment of the Court of Appeals for the Fifth Circuit is

Reversed.

Syllabus

ALLIED-BRUCE TERMINIX COS., INC., ET AL. *v.* DOBSON ET AL.

CERTIORARI TO THE SUPREME COURT OF ALABAMA

No. 93–1001. Argued October 4, 1994—Decided January 18, 1995

The termite prevention contract between petitioner exterminators and respondent Gwin, a homeowner, specified that any controversy thereunder would be settled exclusively by arbitration. After respondents Dobson, who had purchased Gwin's home, sued in state court following a termite infestation, petitioners asked for, but were denied, a stay to allow for arbitration under the contract and § 2 of the Federal Arbitration Act, which makes enforceable a written arbitration provision in "a contract evidencing a transaction involving commerce." The Alabama Supreme Court affirmed on the basis of a state statute invalidating predispute arbitration agreements, ruling that the federal Act applies only if, at the time the parties entered into the contract and accepted the arbitration clause, they "contemplated" substantial interstate activity. Despite some such activities, the court found that these parties "contemplated" a transaction that was primarily local and not "substantially" interstate.

Held: Section 2's interstate commerce language should be read broadly to extend the Act's reach to the limits of Congress' Commerce Clause power. The use of the words "evidencing" and "involving" does not restrict the Act's application and thereby allow a State to apply its anti-arbitration law or policy. Pp. 270–282.

(a) The legal background demonstrates that the Act has the basic purpose of overcoming judicial hostility to arbitration agreements and applies in both federal diversity cases and state courts, where it pre-empts state statutes invalidating such agreements. See, *e. g.*, *Southland Corp.* v. *Keating*, 465 U. S. 1, 15–16. It would be inappropriate to overrule *Southland* and permit Alabama to apply its antiarbitration statute, since the Court in that case considered the basic arguments now raised, and nothing significant changed subsequently; since, in the interim, private parties have likely written contracts relying on *Southland;* and since Congress, both before and after *Southland*, has enacted legislation extending, not retracting, the scope of arbitration. Pp. 270–273.

(b) The statute's language, background, and structure establish that § 2's "involving commerce" words are the functional equivalent of the phrase "affecting commerce," which normally signals Congress' intent to exercise its commerce power to the full, see *Russell* v. *United States*,

471 U. S. 858, 859. The linguistic permissibility of this interpretation is demonstrated by dictionary definitions in which "involve" and "affect" mean the same thing. Moreover, the Act's legislative history, to the extent that it is informative, indicates an expansive congressional intent, and this Court has described the Act's reach expansively as coinciding with that of the Commerce Clause, see, *e. g., Southland, supra,* at 14–15. Finally, a broad interpretation of this language is consistent with the Act's basic purpose, while a narrower interpretation would create a new, unfamiliar test that would unnecessarily complicate the law and breed litigation. For these reasons, the Act's scope can be said to have expanded along with the commerce power over the years, even though the Congress that passed the Act in 1925 might well have thought the Commerce Clause did not stretch as far as has turned out to be so. *Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 410; *Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 470; and *Bernhardt* v. *Polygraphic Co. of America, Inc.,* 350 U. S. 198, 200–202, distinguished. Pp. 273–277.

(c) Section 2's "evidencing a transaction" phrase means that the "transaction" (that the contract "evidences") must turn out, in fact, to have involved interstate commerce. For several reasons, this "commerce in fact" interpretation is more faithful to the statute than the "contemplation of the parties" test adopted below and in other courts. First, the latter interpretation, when viewed in terms of the statute's basic purpose, seems anomalous because it invites litigation about what was, or was not, "contemplated," because it too often would turn the validity of an arbitration clause upon the happenstance of whether the parties thought to insert a reference to interstate commerce in their document or to mention it in an initial conversation, and because it fits awkwardly with the rest of § 2. Second, the statute's language permits the "commerce in fact" interpretation. Although that interpretation concededly leaves little work for the word "evidencing," nothing in the Act's history suggests any other, more limiting, task for the language. Third, the force of the basic practical argument underlying the "contemplation of the parties" test, *i. e.,* that encroaching on powers reserved to the States must be avoided, has diminished following this Court's holdings that the Act displaces contrary state law. Finally, despite an *amicus*' claim, it is unclear whether an "objective" version of that test would better protect consumers asked to sign form contracts by businesses. In any event, § 2 authorizes States to invalidate an arbitration clause "upon such grounds as exist at law or in equity for the revocation of any contract," and thereby gives them a method for protecting consumers against unwanted arbitration provisions. Pp. 277–281.

Syllabus

(d) The parties do not contest that the transaction in this case, in fact, involved interstate commerce. P. 282.

628 So. 2d 354, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined. O'CONNOR, J., filed a concurring opinion, *post*, p. 282. SCALIA, J., filed a dissenting opinion, *post*, p. 284. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 285.

H. Bartow Farr III argued the cause for petitioners. With him on the briefs were *Richard G. Taranto*, *Joseph P. Jones, Jr.*, and *T. Julian Motes.*

Allan R. Chason argued the cause for respondents. With him on the brief were *Kenneth J. Chesebro* and *Kenneth W. Hooks.**

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*Briefs of *amici curiae* urging reversal were filed for the Alabama Water and Wastewater Institute et al. by *Robert E. Sasser;* for the American Arbitration Association by *Michael F. Hoellering*, *Rosemary S. Page*, *Robert B. von Mehren*, *James H. Carter*, *Donald Francis Donovan*, *Andreas F. Lowenfeld*, and *David W. Rivkin;* for the American Bankers Association et al. by *Theodore B. Olson*, *Theodore J. Boutrous, Jr.*, *Robert H. Carpenter*, and *Theodore Fischkin;* and for the American Council of Life Insurance by *Patricia A. Dunn*, *Stephen J. Goodman*, *Richard E. Barnsback*, and *Phillip E. Stano.*

Briefs of *amici curiae* urging affirmance were filed for the Attorney General of the State of Alabama et al. by *James H. Evans*, Attorney General of Alabama, *pro se*, and *Carol Jean Smith*, Assistant Attorney General, and by the Attorneys General, *pro se*, for their respective jurisdictions as follows: *Bruce M. Botelho* of Alaska, *Gale A. Norton* of Colorado, *Robert A. Marks* of Hawaii, *Scott Harshbarger* of Massachusetts, *Jeremiah W. Nixon* of Missouri, *Don Stenberg* of Nebraska, *Jeffrey R. Howard* of New Hampshire, *Winston Bryant* of Arkansas, *Robert A. Butterworth* of Florida, *Roland W. Burris* of Illinois, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Deborah T. Poritz* of New Jersey, *Heidi Heitkamp* of North Dakota, *T. Travis Medlock* of South Carolina, *Jeffrey L. Amestoy* of Vermont, *Ernest D. Preate, Jr.*, of Pennsylvania, and *Jan Graham* of Utah; and for the Southern Poverty Law Center by *J. Richard Cohen*, *Morris S. Dees, Jr.*, and *Edward Ashworth.*

JUSTICE BREYER delivered the opinion of the Court.

This case concerns the reach of § 2 of the Federal Arbitration Act. That section makes enforceable a written arbitration provision in "a contract *evidencing* a transaction *involving* commerce." 9 U. S. C. § 2 (emphasis added). Should we read this phrase broadly, extending the Act's reach to the limits of Congress' Commerce Clause power? Or, do the two italicized words—"involving" and "evidencing"—significantly restrict the Act's application? We conclude that the broader reading of the Act is the correct one, and we reverse a State Supreme Court judgment to the contrary.

I

In August 1987, Steven Gwin, a respondent who owned a house in Birmingham, Alabama, bought a lifetime "Termite Protection Plan" (Plan) from the local office of Allied-Bruce Terminix Companies, a franchise of Terminix International Company. In the Plan, Allied-Bruce promised "to protect" Gwin's house "against the attack of subterranean termites," to reinspect periodically, to provide any "further treatment found necessary," and to repair, up to $100,000, damage caused by new termite infestations. App. 69. Terminix International "guarantee[d] the fulfillment of the terms" of the Plan. *Ibid.* The Plan's contract document provided in writing that

> "*any controversy or claim* . . . arising out of or relating to the interpretation, performance or breach of any provision of this agreement *shall be settled exclusively by arbitration.*" *Id.*, at 70 (emphasis added).

In the spring of 1991, Mr. and Mrs. Gwin, wishing to sell their house to Mr. and Mrs. Dobson, had Allied-Bruce reinspect the house. They obtained a clean bill of health. But no sooner had they sold the house and transferred the Plan to Mr. and Mrs. Dobson than the Dobsons found the house swarming with termites. Allied-Bruce attempted to treat

and repair the house, but the Dobsons found Allied-Bruce's efforts inadequate. They therefore sued the Gwins, and (along with the Gwins, who cross-claimed) also sued Allied-Bruce and Terminix in Alabama state court. Allied-Bruce and Terminix, pointing to the Plan's arbitration clause and §2 of the Federal Arbitration Act, immediately asked the court for a stay, to allow arbitration to proceed. The court denied the stay. Allied-Bruce and Terminix appealed.

The Supreme Court of Alabama upheld the denial of the stay on the basis of a state statute, Ala. Code §8–1–41(3) (1993), making written, predispute arbitration agreements invalid and "unenforceable." 628 So. 2d 354, 355 (1993). To reach this conclusion, the court had to find that the Federal Arbitration Act, which pre-empts conflicting state law, did not apply to the termite contract. It made just that finding. The court considered the federal Act inapplicable because the connection between the termite contract and interstate commerce was too slight. In the court's view, the Act applies to a contract only if "'at the time [the parties entered into the contract] and accepted the arbitration clause, they *contemplated* substantial interstate activity.'" *Ibid.* (emphasis in original) (quoting *Metro Industrial Painting Corp.* v. *Terminal Constr. Co.*, 287 F. 2d 382, 387 (CA2) (Lumbard, C. J., concurring), cert. denied, 368 U. S. 817 (1961)). Despite some interstate activities (*e. g.*, Allied-Bruce, like Terminix, is a multistate firm and shipped treatment and repair material from out of state), the court found that the parties "contemplated" a transaction that was primarily local and not "substantially" interstate.

Several state courts and Federal District Courts, like the Supreme Court of Alabama, have interpreted the Act's language as requiring the parties to a contract to have "contemplated" an interstate commerce connection. See, *e. g.*, *Burke County Public Schools Bd. of Ed.* v. *Shaver Partnership*, 303 N. C. 408, 417–420, 279 S. E. 2d 816, 822–823 (1981); *R. J. Palmer Constr. Co.* v. *Wichita Band Instrument Co.*, 7 Kan.

App. 2d 363, 367, 642 P. 2d 127, 130 (1982); *Lacheney* v. *Profitkey Int'l, Inc.*, 818 F. Supp. 922, 924 (ED Va. 1993). Several federal appellate courts, however, have interpreted the same language differently, as reaching to the limits of Congress' Commerce Clause power. See, *e. g.*, *Foster* v. *Turley*, 808 F. 2d 38, 40 (CA10 1986); *Robert Lawrence Co.* v. *Devonshire Fabrics, Inc.*, 271 F. 2d 402, 406–407 (CA2 1959), cert. dism'd, 364 U. S. 801 (1960); cf. *Snyder* v. *Smith*, 736 F. 2d 409, 417–418 (CA7), cert. denied, 469 U. S. 1037 (1984). We granted certiorari to resolve this conflict, 510 U. S. 1190 (1994); and, as we said, we conclude that the broader reading of the statute is the right one.

II

Before we can reach the main issues in this case, we must set forth three items of legal background.

First, the basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate. See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 474 (1989). The origins of those refusals apparently lie in "'ancient times,'" when the English courts fought "'for extension of jurisdiction—all of them being opposed to anything that would altogether deprive every one of them of jurisdiction.'" *Bernhardt* v. *Polygraphic Co. of America, Inc.*, 350 U. S. 198, 211, n. 5 (1956) (Frankfurter, J., concurring) (quoting *United States Asphalt Refining Co.* v. *Trinidad Lake Petroleum Co.*, 222 F. 1006, 1007 (SDNY 1915), in turn quoting *Scott* v. *Avery*, 5 H. L. Cas. 811 (1856) (Campbell, L. J.)). American courts initially followed English practice, perhaps just "'stand[ing] . . . upon the antiquity of the rule'" prohibiting arbitration clause enforcement, rather than "'upon its excellence or reason.'" *Bernhardt* v. *Polygraphic Co.*, *supra*, at 211, n. 5 (quoting *United States Asphalt Refining Co.*, *supra*, at 1007). Regardless, when Congress passed the Arbitration Act in 1925, it was "motivated, first and foremost, by a

. . . desire" to change this antiarbitration rule. *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 220 (1985). It intended courts to "enforce [arbitration] agreements into which parties had entered," *ibid.* (footnote omitted), and to "place such agreements 'upon the same footing as other contracts,' " *Volt Information Sciences, Inc.*, *supra*, at 474 (quoting *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506, 511 (1974)).

Second, some initially assumed that the Federal Arbitration Act represented an exercise of Congress' Article III power to "ordain and establish" federal courts, U. S. Const., Art. III, § 1. See *Southland Corp.* v. *Keating*, 465 U. S. 1, 28, n. 16 (1984) (O'Connor, J., dissenting) (collecting cases). In 1967, however, this Court held that the Act "is based upon and confined to the incontestable federal foundations of 'control over interstate commerce and over admiralty.' " *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 405 (1967) (quoting H. R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924)). The Court considered the following complicated argument: (1) The Act's provisions (about contract remedies) are important and often outcome determinative, and thus amount to "substantive," not "procedural," provisions of law; (2) *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 71–80 (1938), made clear that federal courts must apply *state* substantive law in diversity cases, see also *Hanna* v. *Plumer*, 380 U. S. 460, 465 (1965); therefore (3) federal courts must not apply the Federal Arbitration Act in diversity cases. This Court responded by agreeing that the Act set forth substantive law, but concluding that, nonetheless, the Act applied in diversity cases because Congress had so intended. The Court wrote: "Congress may prescribe how federal courts are to conduct themselves with respect to subject matter over which Congress plainly has power to legislate." *Prima Paint*, *supra*, at 405.

Third, the holding in *Prima Paint* led to a further question. Did Congress intend the Act also to apply in state courts? Did the Federal Arbitration Act pre-empt conflict-

ing state antiarbitration law, or could state courts apply their antiarbitration rules in cases before them, thereby reaching results different from those reached in otherwise similar federal diversity cases? In *Southland Corp.* v. *Keating, supra*, this Court decided that Congress would not have wanted state and federal courts to reach different outcomes about the validity of arbitration in similar cases. The Court concluded that the Federal Arbitration Act pre-empts state law; and it held that state courts cannot apply state statutes that invalidate arbitration agreements. *Id.*, at 15–16.

We have set forth this background because respondents, supported by 20 state attorneys general, now ask us to overrule *Southland* and thereby to permit Alabama to apply its antiarbitration statute in this case irrespective of the proper interpretation of § 2. The *Southland* Court, however, recognized that the pre-emption issue was a difficult one, and it considered the basic arguments that respondents and *amici* now raise (even though those issues were not thoroughly briefed at the time). Nothing significant has changed in the 10 years subsequent to *Southland;* no later cases have eroded *Southland*'s authority; and no unforeseen practical problems have arisen. Moreover, in the interim, private parties have likely written contracts relying upon *Southland* as authority. Further, Congress, both before and after *Southland,* has enacted legislation extending, not retracting, the scope of arbitration. See, *e. g.*, 9 U. S. C. § 15 (eliminating the Act of State doctrine as a bar to arbitration); 9 U. S. C. §§ 201–208 (international arbitration). For these reasons, we find it inappropriate to reconsider what is by now well-established law.

We therefore proceed to the basic interpretive questions aware that we are interpreting an Act that seeks broadly to overcome judicial hostility to arbitration agreements and that applies in both federal and state courts. We must decide in this case whether that Act used language about interstate commerce that nonetheless limits the Act's application,

thereby carving out an important statutory niche in which a State remains free to apply its antiarbitration law or policy. We conclude that it does not.

III

The Federal Arbitration Act, § 2, provides that a

> "written provision in any maritime transaction or *a contract evidencing a transaction involving commerce* to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. § 2 (emphasis added).

The initial interpretive question focuses upon the words "involving commerce." These words are broader than the often-found words of art "in commerce." They therefore cover more than "'only persons or activities *within the flow* of interstate commerce.'" *United States* v. *American Building Maintenance Industries*, 422 U. S. 271, 276 (1975) (quoting *Gulf Oil Corp.* v. *Copp Paving Co.*, 419 U. S. 186, 195 (1974)) (defining "in commerce" as related to the "flow" and defining the "flow" to include "the generation of goods and services for interstate markets and their transport and distribution to the consumer"); see also *FTC* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 351 (1941). But how far beyond the flow of commerce does the word "involving" reach? Is "involving" the functional equivalent of the word "affecting"? That phrase—"affecting commerce"—normally signals Congress' intent to exercise its Commerce Clause powers to the full. See *Russell* v. *United States*, 471 U. S. 858, 859 (1985). We cannot look to other statutes for guidance for the parties tell us that this is the only federal statute that uses the word "involving" to describe an interstate commerce relation.

After examining the statute's language, background, and structure, we conclude that the word "involving" is broad

and is indeed the functional equivalent of "affecting." For one thing, such an interpretation, linguistically speaking, is permissible. The dictionary finds instances in which "involve" and "affect" sometimes can mean about the same thing. V Oxford English Dictionary 466 (1st ed. 1933) (providing examples dating back to the mid-19th century, where "involve" means to "include or affect in . . . operation"). For another, the Act's legislative history, to the extent that it is informative, indicates an expansive congressional intent. See, *e. g.*, H. R. Rep. No. 96, *supra*, at 1 (the Act's "control over interstate commerce reaches not only the actual physical interstate shipment of goods but also contracts relating to interstate commerce"); 65 Cong. Rec. 1931 (1924) (the Act "affects contracts relating to interstate subjects and contracts in admiralty") (remarks of Rep. Graham); Joint Hearings on S. 1005 and H. R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess., 7 (1924) (hereinafter Joint Hearings) (testimony of Charles L. Bernheimer, chairman of the Committee on Arbitration of the Chamber of Commerce of the State of New York, agreeing that the proposed bill "relates to contracts arising in interstate commerce"); *id.*, at 16 (testimony of Julius H. Cohen, drafter for the American Bar Association of much of the proposed bill's language, that the Act reflects part of a strategy to rid the law of an "anachronism" by "get[ting] a Federal law to cover interstate and foreign commerce and admiralty"); see also 9 U. S. C. § 1 (defining the word "commerce" in the language of the Commerce Clause itself).

Further, this Court has previously described the Act's reach expansively as coinciding with that of the Commerce Clause. See, *e. g.*, *Perry* v. *Thomas*, 482 U. S. 483, 490 (1987) (the Act "embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause"); *Southland Corp.* v. *Keating*, 465 U. S., at 14–15 (the "'involving commerce'" requirement is a constitutionally "necessary qualification" on the Act's reach,

marking its permissible outer limit); see also *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S., at 407 (Harlan, J., concurring) (endorsing *Robert Lawrence Co.* v. *Devonshire Fabrics, Inc.*, 271 F. 2d 402, 407 (CA2 1959) (Congress, in enacting the FAA, "took pains to utilize as much of its power as it could")).

Finally, a broad interpretation of this language is consistent with the Act's basic purpose, to put arbitration provisions on "'the same footing'" as a contract's other terms. *Scherk* v. *Alberto-Culver Co.*, 417 U. S., at 511. Conversely, a narrower interpretation is not consistent with the Act's purpose, for (unless unreasonably narrowed to the flow of commerce) such an interpretation would create a new, unfamiliar test lying somewhere in a no man's land between "in commerce" and "affecting commerce," thereby unnecessarily complicating the law and breeding litigation from a statute that seeks to avoid it.

We recognize arguments to the contrary: The pre-New Deal Congress that passed the Act in 1925 might well have thought the Commerce Clause did not stretch as far as has turned out to be the case. But, it is not unusual for this Court in similar circumstances to ask whether the scope of a statute should expand along with the expansion of the Commerce Clause power itself, and to answer the question affirmatively—as, for the reasons set forth above, we do here. See, *e. g.*, *McLain* v. *Real Estate Bd. of New Orleans, Inc.*, 444 U. S. 232, 241 (1980); *Hospital Building Co.* v. *Trustees of Rex Hospital*, 425 U. S. 738, 743, n. 2 (1976).

Further, the Gwins and Dobsons point to two cases containing what they believe to be favorable language. In *Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344 (1922), and then again in *Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457 (1924), they say, this Court said that one might draw a distinction between, on the one hand, cases that "*involve* interstate commerce intrinsically," and, on the other hand, cases "*affecting* interstate commerce so directly

as to be within the federal regulatory power." *Mine Workers*, *supra*, at 410 (emphasis added); *Leather Workers*, *supra*, at 470 (same). One could read these cases as driving a wedge between "involve" and "affecting." Yet, in these cases, the Court was not construing a statute containing the words "involving commerce." Furthermore, nothing suggests the drafters of the Act looked to these cases as a source. And, these cases themselves use the phrase "involve . . . intrinsically," not the word "involving" alone. In sum, these cases do not support respondents' position.

The Gwins and Dobsons, with far better reason, point to a different case, *Bernhardt* v. *Polygraphic Co. of America, Inc.*, 350 U. S. 198 (1956). In that case, Bernhardt, a New York resident, had entered into an employment contract (containing an arbitration clause) in New York with Polygraphic, a New York corporation. But, Bernhardt "was to perform" that contract after he "later became a resident of Vermont." *Id.*, at 199. This Court was faced with the question whether, in light of *Erie*, a federal court should apply the Federal Arbitration Act in a diversity case when faced with state law hostile to arbitration. 350 U. S., at 200. The Court did not reach that question, however, for it decided that the contract itself did not "involv[e]" interstate commerce and therefore fell outside the Act. *Id.*, at 200–202. Since Congress, constitutionally speaking, *could* have applied the Act to Bernhardt's contract, say the parties, how then can we say that the Act's word "involving" reaches as far as the Commerce Clause itself?

The best response to this argument is to point to the way in which the Court reasoned in *Bernhardt*, and to what the Court said. It said that the *reason* the Act did not apply to Bernhardt's contract was that there was

> "*no showing that petitioner* while performing his duties under the employment contract was working 'in' commerce, was producing goods for commerce, or *was engaging in activity that affected commerce*, within the

meaning of our decisions." *Id.*, at 200–201 (emphasis added) (footnote omitted).

Thus, the Court interpreted the words "involving commerce" as broadly as the words "affecting commerce"; and, as we have said, these latter words normally mean a full exercise of constitutional power. At the same time, the Court's opinion does not discuss the implications of the "interstate" facts to which the respondents now point. For these reasons, *Bernhardt* does not require us to narrow the scope of the word "involving." And, we conclude that the word "involving," like "affecting," signals an intent to exercise Congress' commerce power to the full.

IV

Section 2 applies where there is "a contract *evidencing a transaction* involving commerce." 9 U. S. C. §2 (emphasis added). The second interpretive question focuses on the italicized words. Does "evidencing a transaction" mean only that the transaction (that the contract "evidences") must turn out, *in fact*, to have involved interstate commerce? Or, does it mean more?

Many years ago, Second Circuit Chief Judge Lumbard said that the phrase meant considerably more. He wrote:

> "The significant question . . . is not whether, in carrying out the terms of the contract, the parties *did* cross state lines, but whether, *at the time they entered into it* and accepted the arbitration clause, they *contemplated* substantial interstate activity. Cogent evidence regarding their state of mind at the time would be the terms of the contract, and if it, on its face, evidences interstate traffic . . . , the contract should come within §2. In addition, evidence as to how the parties expected the contract to be performed and how it was performed is relevant to whether substantial interstate activity was contemplated." *Metro Industrial Painting Corp.*

v. *Terminal Constr. Co.*, 287 F. 2d 382, 387 (1961) (concurring opinion) (second emphasis added).

The Supreme Court of Alabama and several other courts have followed this view, known as the "contemplation of the parties" test. See *supra*, at 269–270.

We find the interpretive choice difficult, but for several reasons we conclude that the first interpretation ("commerce in fact") is more faithful to the statute than the second ("contemplation of the parties"). First, the "contemplation of the parties" interpretation, when viewed in terms of the statute's basic purpose, seems anomalous. That interpretation invites litigation about what was, or was not, "contemplated." Why would Congress intend a test that risks the very kind of costs and delay through litigation (about the circumstances of contract formation) that Congress wrote the Act to help the parties avoid? See *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 29 (1983) (the Act "calls for a summary and speedy disposition of motions or petitions to enforce arbitration clauses").

Moreover, that interpretation too often would turn the validity of an arbitration clause on what, from the perspective of the statute's basic purpose, seems happenstance, namely, whether the parties happened to think to insert a reference to interstate commerce in the document or happened to mention it in an initial conversation. After all, parties to a sales contract with an arbitration clause might naturally think about the goods sold, or about arbitration, but why should they naturally think about an interstate commerce connection?

Further, that interpretation fits awkwardly with the rest of § 2. That section, for example, permits parties to agree to submit to arbitration "an existing controversy arising out of" a contract made earlier. Why would Congress want to risk nonenforceability of this *later* arbitration agreement (even if fully connected with interstate commerce) simply because the parties did not properly "contemplate" (or write

about) the interstate aspects of the earlier contract? The first interpretation, requiring only that the "transaction" *in fact* involve interstate commerce, avoids this anomaly, as it avoids the other anomalous effects growing out of the "contemplation of the parties" test.

Second, the statute's language permits the "commerce in fact" interpretation. That interpretation, we concede, leaves little work for the word "evidencing" (in the phrase "a contract evidencing a transaction") to perform, for every contract evidences some transaction. But, perhaps Congress did not want that word to perform much work. The Act's history, to the extent informative, indicates that the Act's supporters saw the Act as part of an effort to make arbitration agreements universally enforceable. They wanted to "get a Federal law" that would "cover" areas where the Constitution authorized Congress to legislate, namely, "interstate and foreign commerce and admiralty." Joint Hearings 16 (testimony of Julius H. Cohen). They urged Congress to model the Act after a New York statute that made enforceable a written arbitration provision "in a written contract," Act of Apr. 19, 1920, ch. 275, § 2, 1920 N. Y. Laws 803, 804. Hearing on S. 4213 and S. 4214 before the Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 2 (1923) (testimony of Charles L. Bernheimer). Early drafts made enforceable a written arbitration provision "in *any contract* or maritime transaction *or* transaction involving commerce." S. 4214, 67th Cong., 4th Sess., § 2 (1922) (emphasis added); S. 1005, 68th Cong., 1st Sess. (1923); H. R. 646, 68th Cong., 1st Sess. (1924). Members of Congress, looking at that phrase, might have thought the words "any contract" standing alone went beyond Congress' constitutional authority. And, if so, they might have simply connected those words with the later words "transaction involving commerce," thereby creating the phrase that became law. Nothing in the Act's history suggests any other, more limiting, task for the language.

Third, the basic practical argument underlying the "contemplation of the parties" test was, in Chief Judge Lumbard's words, the need to "be cautious in construing the act lest we excessively encroach on the powers which Congressional policy, if not the Constitution, would reserve to the states." *Metro Industrial Painting Corp.*, *supra*, at 386 (concurring opinion). The practical force of this argument has diminished in light of this Court's later holdings that the Act does displace state law to the contrary. See *Southland Corp.* v. *Keating*, 465 U. S., at 10–16; *Perry* v. *Thomas*, 482 U. S., at 489–492.

Finally, we note that an *amicus curiae* argues for an "objective" ("reasonable person" oriented) version of the "contemplation of the parties" test on the ground that such an interpretation would better protect consumers asked to sign form contracts by businesses. We agree that Congress, when enacting this law, had the needs of consumers, as well as others, in mind. See S. Rep. No. 536, 68th Cong., 1st Sess., 3 (1924) (the Act, by avoiding "the delay and expense of litigation," will appeal "to big business and little business alike, . . . corporate interests [and] . . . individuals"). Indeed, arbitration's advantages often would seem helpful to individuals, say, complaining about a product, who need a less expensive alternative to litigation. See, *e. g.*, H. R. Rep. No. 97–542, p. 13 (1982) ("The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices . . ."). And, according to the American Arbitration Association (also an *amicus* here), more than one-third of its claims involve amounts below $10,000, while another third involve claims of $10,000 to $50,000 (with an average processing time of less than six

months). App. to Brief for American Arbitration Association as *Amicus Curiae* 26–27.

We are uncertain, however, just how the "objective" version of the "contemplation" test would help consumers. Sometimes, of course, it would permit, say, a consumer with potentially large damages claims to disavow a contract's arbitration provision and proceed in court. But, if so, it would equally permit, say, local business entities to disavow a contract's arbitration provisions, thereby leaving the typical consumer who has only a small damages claim (who seeks, say, the value of only a defective refrigerator or television set) without any remedy but a court remedy, the costs and delays of which could eat up the value of an eventual small recovery.

In any event, § 2 gives States a method for protecting consumers against unfair pressure to agree to a contract with an unwanted arbitration provision. States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause "upon such grounds as exist at law or in equity for the revocation of *any* contract." 9 U. S. C. § 2 (emphasis added). What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal "footing," directly contrary to the Act's language and Congress' intent. See *Volt Information Sciences, Inc.*, 489 U. S., at 474.

For these reasons, we accept the "commerce in fact" interpretation, reading the Act's language as insisting that the "transaction" in fact "involv[e]" interstate commerce, even if the parties did not contemplate an interstate commerce connection.

V

The parties do not contest that the transaction in this case, in fact, involved interstate commerce. In addition to the multistate nature of Terminix and Allied-Bruce, the termite-treating and house-repairing material used by Allied-Bruce in its (allegedly inadequate) efforts to carry out the terms of the Plan, came from outside Alabama.

Consequently, the judgment of the Supreme Court of Alabama is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, concurring.

I agree with the Court's construction of § 2 of the Federal Arbitration Act. As applied in federal courts, the Court's interpretation comports fully with my understanding of congressional intent. A more restrictive definition of "evidencing" and "involving" would doubtless foster prearbitration litigation that would frustrate the very purpose of the statute. As applied in state courts, however, the effect of a broad formulation of § 2 is more troublesome. The reading of § 2 adopted today will displace many state statutes carefully calibrated to protect consumers, see, *e. g.*, Mont. Code Ann. § 27–5–114(2)(b) (1993) (refusing to enforce arbitration clauses in consumer contracts where the consideration is $5,000 or less), and state procedural requirements aimed at ensuring knowing and voluntary consent, see, *e. g.*, S. C. Code Ann. § 15–48–10(a) (Supp. 1993) (requiring that notice of arbitration provision be prominently placed on first page of contract). I have long adhered to the view, discussed below, that Congress designed the Federal Arbitration Act to apply only in federal courts. But if we are to apply the Act in state courts, it makes little sense to read § 2 differently in that context. In the end, my agreement with the Court's construction of § 2 rests largely on the wisdom of maintaining a uniform standard.

I continue to believe that Congress never intended the Federal Arbitration Act to apply in state courts, and that this Court has strayed far afield in giving the Act so broad a compass. See *Southland Corp.* v. *Keating*, 465 U. S. 1, 21–36 (1984) (O'Connor, J., dissenting); see also *Perry* v. *Thomas*, 482 U. S. 483, 494–495 (1987) (O'Connor, J., dissenting); *York International* v. *Alabama Oxygen Co.*, 465 U. S. 1016 (1984) (O'Connor, J., dissenting from remand). We have often said that the pre-emptive effect of a federal statute is fundamentally a question of congressional intent. See, *e. g.*, *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 516 (1992); *English* v. *General Elec. Co.*, 496 U. S. 72, 78–79 (1990); *Schneidewind* v. *ANR Pipeline Co.*, 485 U. S. 293, 299 (1988); *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). Indeed, we have held that "'[w]here . . . the field which Congress is said to have pre-empted' includes areas that have 'been traditionally occupied by the States,' congressional intent to supersede state laws must be 'clear and manifest.'" *English*, *supra*, at 79, quoting *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 525 (1977). Yet, over the past decade, the Court has abandoned all pretense of ascertaining congressional intent with respect to the Federal Arbitration Act, building instead, case by case, an edifice of its own creation. See *Perry* v. *Thomas*, *supra*, at 493 (Stevens, J., dissenting) ("It is only in the last few years that the Court has effectively rewritten the statute to give it a pre-emptive scope that Congress certainly did not intend"). I have no doubt that Congress could enact, in the first instance, a federal arbitration statute that displaces most state arbitration laws. But I also have no doubt that, in 1925, Congress enacted no such statute.

Were we writing on a clean slate, I would adhere to that view and affirm the Alabama court's decision. But, as the Court points out, more than 10 years have passed since *Southland*, several subsequent cases have built upon its reasoning, and parties have undoubtedly made contracts in reli-

ance on the Court's interpretation of the Act in the interim. After reflection, I am persuaded by considerations of *stare decisis*, which we have said "have special force in the area of statutory interpretation," *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989), to acquiesce in today's judgment. Though wrong, *Southland* has not proved unworkable, and, as always, "Congress remains free to alter what we have done." *Ibid.*

Today's decision caps this Court's effort to expand the Federal Arbitration Act. Although each decision has built logically upon the decisions preceding it, the initial building block in *Southland* laid a faulty foundation. I acquiesce in today's judgment because there is no "special justification" to overrule *Southland*. *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984). It remains now for Congress to correct this interpretation if it wishes to preserve state autonomy in state courts.

JUSTICE SCALIA, dissenting.

I have previously joined two judgments of this Court that rested upon the holding of *Southland Corp.* v. *Keating*, 465 U. S. 1 (1984). See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468 (1989); *Perry* v. *Thomas*, 482 U. S. 483 (1987). In neither of those cases, however, did any party ask that *Southland* be overruled, and it was therefore not necessary to consider the question. In the present case, by contrast, one of respondents' central arguments is that *Southland* was wrongly decided, and their request for its overruling has been supported by an *amicus* brief signed by the attorneys general of 20 States. For the reasons set forth in JUSTICE THOMAS' opinion, which I join, I agree with the respondents (and belatedly with JUSTICE O'CONNOR) that *Southland* clearly misconstrued the Federal Arbitration Act.

I do not believe that proper application of *stare decisis* prevents correction of the mistake. Adhering to *Southland*

entails a permanent, unauthorized eviction of state-court power to adjudicate a potentially large class of disputes. Abandoning it does not impair reliance interests to a degree that justifies this evil. Primary behavior is not affected: No rule of conduct is retroactively changed, but only (perhaps) the forum in which violation is to be determined and remedied. I doubt that many contracts with arbitration clauses would have been forgone, or entered into only for significantly higher remuneration, absent the *Southland* guarantee. Where, moreover, reliance on *Southland* did make a significant difference, rescission of the contract for mistake of law would often be available. See 3 A. Corbin, Corbin on Contracts § 616 (1960 ed. and Supp. 1992); Restatement (Second) of Contracts § 152 (1979).

I shall not in the future dissent from judgments that rest on *Southland.* I will, however, stand ready to join four other Justices in overruling it, since *Southland* will not become more correct over time, the course of future lawmaking seems unlikely to be affected by its existence, cf. *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 34–35 (1989) (SCALIA, J., concurring in part and dissenting in part), and the accumulated private reliance will not likely increase beyond the level it has already achieved (few contracts not terminable at will have more than a 5-year term).

For these reasons, I respectfully dissent from the judgment of the Court.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

I disagree with the majority at the threshold of this case, and so I do not reach the question that it decides. In my view, the Federal Arbitration Act (FAA) does not apply in state courts. I respectfully dissent.

I

In *Southland Corp.* v. *Keating,* 465 U. S. 1 (1984), this Court concluded that § 2 of the FAA "appl[ies] in state as

well as federal courts," *id.*, at 12, and "withdr[aws] the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration," *id.*, at 10. In my view, both aspects of *Southland* are wrong.

A

Section 2 of the FAA declares that an arbitration clause contained in "a contract evidencing a transaction involving commerce" shall be "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. § 2; see also § 1 (defining "commerce," as relevant here, to mean "commerce among the several States or with foreign nations"). On its face, and considered out of context, § 2 draws no apparent distinction between federal courts and state courts. But not until 1959—nearly 35 years after Congress enacted the FAA—did any court suggest that § 2 applied in state courts. See *Robert Lawrence Co.* v. *Devonshire Fabrics, Inc.*, 271 F. 2d 402, 407 (CA2 1959), cert. dism'd, 364 U. S. 801 (1960). No state court agreed until the 1960's. See, *e. g.*, *REA Express* v. *Missouri Pacific R. Co.*, 447 S. W. 2d 721, 726 (Tex. Civ. App. 1969) (stating that the FAA applies but noting that it had been waived in the case at hand); cf. *Rubewa Products Co.* v. *Watson's Quality Turkey Products, Inc.*, 242 A. 2d 609, 613 (D. C. 1968) (same). This Court waited until 1984 to conclude, over a strong dissent by JUSTICE O'CONNOR, that § 2 extends to the States. See *Southland*, *supra*, at 10–16.

The explanation for this delay is simple: The statute that Congress enacted actually applies only in federal courts. At the time of the FAA's passage in 1925, laws governing the enforceability of arbitration agreements were generally thought to deal purely with matters of procedure rather than substance, because they were directed solely to the mechanisms for resolving the underlying disputes. As then-Judge Cardozo explained: "Arbitration is a form of procedure whereby differences may be settled. It is not a definition of

the rights and wrongs out of which differences grow." *Berkovitz* v. *Arbib & Houlberg, Inc.*, 230 N. Y. 261, 270, 130 N. E. 288, 290 (1921) (holding the New York arbitration statute of 1920, from which the FAA was copied, to be purely procedural).[1] It would have been extraordinary for Congress to

[1] See also, *e. g., Atlantic Fruit Co.* v. *Red Cross Line*, 276 F. 319, 323 (SDNY 1921) ("Arbitration statutes or judicial recognition of the enforceability of such provisions do not confer a substantive right, but a remedy for the enforcement of the right which is created by the agreement of the parties"), aff'd, 5 F. 2d 218 (CA2 1924); Cohen & Dayton, The New Federal Arbitration Law, 12 Va. L. Rev. 265, 276 (1926) ("[W]hether or not an arbitration agreement is to be enforced is a question of the law of procedure and is determined by the law of the jurisdiction wherein the remedy is sought. That the enforcement of arbitration contracts is within the law of procedure as distinguished from substantive law is well settled by the decisions of our courts" (footnote omitted)); Baum & Pressman, The Enforcement of Commercial Arbitration Agreements in the Federal Courts, 8 N. Y. U. L. Q. Rev. 428, 430 (1931) (referring uncritically to "the prevalent notions that arbitration legislation affects merely the remedy or procedural aspects and not substance"); 2 J. Beale, Conflict of Laws 1245–1246 (1935) ("American courts, without exception, hold that arbitration agreements pertain to remedy or procedure. Consequently, the law of the for[u]m determines their enforceability . . ." (footnote omitted)); cf. *Alexandria Canal Co.* v. *Swann*, 5 How. 83, 87–88 (1847) (whether a court should grant the parties' motion to refer a lawsuit to a panel of arbitrators, and then should enter judgment on the arbitrators' award, was "not [a question] upon the rights of the respective parties, but upon the mode of proceeding by which they were determined," and hence was governed by the law of the forum).

The prevalent view that arbitration statutes were purely procedural does conflict with this Court's reasoning in *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109 (1924), a case that in other respects undermines *Southland*'s position. See *infra*, Part I–B. Without analyzing the question, our opinion in *Red Cross Line* assumed that the threshold validity of an arbitration agreement (like the validity of other sorts of contracts) is a matter of "substantive" law. See 264 U. S., at 122–123. But our actual holding—that the remedies available to enforce a valid arbitration agreement do *not* involve "substantive" law, see *id.*, at 124–125—was perfectly consistent with the customary view. As discussed below, moreover, the FAA's text clearly reflects Congress' view that the statute it enacted was purely procedural.

attempt to prescribe procedural rules for *state* courts. See, *e. g.*, *Ex parte Gounis*, 304 Mo. 428, 437, 263 S. W. 988, 990 (1924) (describing the rule that Congress cannot "regulate or control [state courts'] modes of procedure" as one of the "general principles which have come to be accepted as settled constitutional law"). And because the FAA was enacted against this general background, no one read it as such an attempt. See, *e. g.*, Baum & Pressman, The Enforcement of Commercial Arbitration Agreements in the Federal Courts, 8 N. Y. U. L. Q. Rev. 428, 459 (1931) (noting that the FAA "does not purport to extend its teeth to state proceedings," though arguing that it constitutionally could have done so); 6 S. Williston & G. Thompson, Law of Contracts 5368 (rev. ed. 1938) ("Inasmuch as arbitration acts are deemed procedural, the [FAA] applies only to the federal courts . . ." (footnote omitted)); cf. *Southland*, 465 U. S., at 25–29 (O'CONNOR, J., dissenting) (describing "unambiguous" legislative history to this effect).

Indeed, to judge from the reported cases, it appears that no state court was even *asked* to enforce the statute for many years after the passage of the FAA. Federal courts, for their part, refused to apply state arbitration statutes in cases to which the FAA was inapplicable. See, *e. g.*, *California Prune & Apricot Growers' Assn.* v. *Catz American Co.*, 60 F. 2d 788 (CA9 1932). Their refusal was not the outgrowth of this Court's decision in *Swift* v. *Tyson*, 16 Pet. 1 (1842), which held that certain categories of state judicial decisions were not "laws" for purposes of the Rules of Decisions Act and hence were not binding in federal courts; even under *Swift*, state statutes unambiguously constituted "laws." Rather, federal courts did not apply the state arbitration statutes because the statutes were not considered *substantive* laws. See *California Prune*, *supra*, at 790 ("It is undoubtedly true that a federal court in proper cases may enforce state laws; but this principle is applicable only when the state legislation invoke[d] creates or establishes a sub-

stantive or general right"). In short, state arbitration statutes prescribed rules for the state courts, and the FAA prescribed rules for the federal courts.

It is easy to understand why lawyers in 1925 classified arbitration statutes as procedural. An arbitration agreement is a species of forum-selection clause: Without laying down any rules of decision, it identifies the adjudicator of disputes. A strong argument can be made that such forum-selection clauses concern procedure rather than substance. Cf. Fed. Rules Civ. Proc. 73 (district court, with consent of the parties, may refer case to magistrate for resolution), 53 (district court may refer issues to special master). And if a contractual provision deals purely with matters of judicial procedure, one might well conclude that questions about whether and how it will be enforced also relate to procedure.

The context of §2 confirms this understanding of the FAA's original meaning. Most sections of the statute plainly have no application in state courts, but rather prescribe rules either for federal courts or for arbitration proceedings themselves. Thus, §3 provides:

> "If any suit or proceeding be brought in *any of the courts of the United States* upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U. S. C. §3 (emphasis added).

Section 4 addresses the converse situation, in which a party breaches an arbitration agreement not by filing a lawsuit but rather by refusing to submit to arbitration:

> "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition *any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties*, for an order directing that such arbitration proceed in the manner provided for in such agreement. . . . The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." (Emphasis added.)

The Act then turns its attention to the covered arbitration proceedings themselves, treating the arbitration forum as an extension of the federal courts. Section 7, for instance, provides that the fees for witnesses "shall be the same as the fees of witnesses before masters of the United States courts"; it adds that if a witness neglects a summons to appear at an arbitration hearing,

> "upon petition the United States district court for the district in which such arbitrators . . . are sitting may compel the attendance of such person . . . or punish said person . . . for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States."

Likewise, when the arbitrator eventually issues an award, either party (absent contrary directions in the agreement) may apply to "the United States court in and for the district within which such award was made" for an order confirming the award. § 9. The district court may also vacate or modify the award in a few specified circumstances, §§ 10–11, but

generally it will simply enter a confirmatory judgment, § 9, which is then docketed and given the same effect as a judgment in an ordinary civil case, § 13.

Despite the FAA's general focus on the federal courts, of course, § 2 itself contains no such explicit limitation. But the text of the statute nonetheless makes clear that § 2 was not meant as a statement of substantive law binding on the States. After all, if § 2 really was understood to "creat[e] federal substantive law requiring the parties to honor arbitration agreements," *Southland*, *supra*, at 15, n. 9, then the breach of an arbitration agreement covered by § 2 would give rise to a federal question within the subject-matter jurisdiction of the federal district courts. See 28 U. S. C. § 1331. Yet the ensuing provisions of the Act, without expressly taking away this jurisdiction, clearly rest on the assumption that federal courts have jurisdiction to enforce arbitration agreements only when they would have had jurisdiction over the underlying dispute. See 9 U. S. C. §§ 3, 4, 8. In other words, the FAA treats arbitration simply as one means of resolving disputes that lie within the jurisdiction of the federal courts; it makes clear that the breach of a covered arbitration agreement does not itself provide any independent basis for such jurisdiction. Even the *Southland* majority was forced to acknowledge this point, conceding that § 2 "does not create any independent federal-question jurisdiction under 28 U. S. C. § 1331 or otherwise." 465 U. S., at 15, n. 9. But the *reason* that § 2 does not give rise to federal-question jurisdiction is that it was enacted as a purely procedural provision. For the same reason, it applies only in the federal courts.

The distinction between "substance" and "procedure" acquired new meaning after *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). Thus, in 1956 we held that for *Erie* purposes, the question whether a court should stay litigation brought in breach of an arbitration agreement is one of "substantive" law. *Bernhardt* v. *Polygraphic Co. of America, Inc.*, 350

U. S. 198, 203–204. But this later development could not change the original meaning of the statute that Congress enacted in 1925. Although *Bernhardt* classified portions of the FAA as "substantive" rather than "procedural," it does not mean that they were so understood in 1925 or that Congress extended the FAA's reach beyond the federal courts.

When JUSTICE O'CONNOR pointed out the FAA's original meaning in her *Southland* dissent, see 465 U. S., at 25–30, the majority offered only one real response. If § 2 had been considered a purely procedural provision, the majority reasoned, Congress would have extended it to *all* contracts rather than simply to maritime transactions and "contract[s] evidencing a transaction involving [interstate or foreign] commerce." See *id.*, at 14. Yet Congress might well have thought that even if it *could* have called upon federal courts to enforce arbitration agreements in every single case that came before them, there was no federal interest in doing so unless interstate commerce or maritime transactions were involved. This conclusion is far more plausible than *Southland*'s idea that Congress both viewed § 2 as a statement of substantive law and believed that it created no federal-question jurisdiction.

Even if the interstate commerce requirement raises uncertainty about the original meaning of the statute, we should resolve the uncertainty in light of core principles of federalism. While "Congress may legislate in areas traditionally regulated by the States" as long as it "is acting within the powers granted it under the Constitution," we assume that "Congress does not exercise [this power] lightly." *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991). To the extent that federal statutes are ambiguous, we do not read them to displace state law. Rather, we must be "absolutely certain" that Congress intended such displacement before we give pre-emptive effect to a federal statute. *Id.*, at 464. In 1925, the enactment of a "substantive" arbitration statute

along the lines envisioned by *Southland* would have displaced an enormous body of state law: Outside of a few States, predispute arbitration agreements either were wholly unenforceable or at least were not subject to specific performance. See generally Note to *Williams* v. *Branning Mfg. Co.*, 47 L. R. A. (n.s.) 337 (1914) (detailed listing of state cases). Far from being "absolutely certain" that Congress swept aside these state rules, I am quite sure that it did not.

B

Suppose, however, that the first aspect of *Southland* was correct: § 2 requires States to enforce the covered arbitration agreements and pre-empts all contrary state law. There still would be no textual basis for *Southland*'s suggestion that § 2 requires the States to enforce those agreements through the remedy of specific performance—that is, by forcing the parties to submit to arbitration. A contract surely can be "valid, irrevocable, and enforceable" even though it can be enforced only through actions for damages. Thus, on the eve of the FAA's enactment, this Court described executory arbitration agreements as being "valid" and as creating "a perfect obligation" under federal law even though federal courts refused to order their specific performance. See *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 120–123 (1924).[2]

To be sure, §§ 3 and 4 of the FAA require that *federal* courts specifically enforce arbitration agreements. These provisions deal, respectively, with the potential plaintiffs and the potential defendants in the underlying dispute: § 3 holds

[2] At the time, indeed, federal courts would award only *nominal* damages for the breach of such agreements. See *Aktieselskabet Korn-Og Foderstof Kompagniet* v. *Rederiaktiebolaget Atlanten*, 250 F. 935, 937 (CA2 1918), aff'd on other grounds *sub nom. The Atlanten*, 252 U. S. 313 (1920); *Munson* v. *Straits of Dover S. S. Co.*, 99 F. 787, 790–791 (SDNY), aff'd, 102 F. 926 (CA2 1900).

the plaintiffs to their promise not to take their claims straight to court, while § 4 holds the defendants to their promise to submit to arbitration rather than making the other party sue them. Had this case arisen in one of the "courts of the United States," it is § 3 that would have been relevant. Upon proper motion, the court would have been obliged to grant a stay pending arbitration, unless the contract between the parties did not "evidenc[e] a transaction involving [interstate] commerce." See *Bernhardt*, *supra*, at 202 (holding that § 3 is limited to the arbitration agreements that § 2 declares valid). Because this case arose in the courts of Alabama, however, petitioners are forced to contend that § 2 imposes precisely the same obligation on *all* courts (both federal and state) that § 3 imposes solely on *federal* courts. Though *Southland* supports this argument, it simply cannot be correct, or § 3 would be superfluous.

Alabama law brings these issues into sharp focus. Citing "public policy" grounds that reach back to *Bozeman* v. *Gilbert*, 1 Ala. 90 (1840), Alabama courts have declared that predispute arbitration agreements are "void." See, *e. g.*, *Wells* v. *Mobile County Bd. of Realtors*, 387 So. 2d 140, 144 (Ala. 1980). But a separate state statute also includes "[a]n agreement to submit a controversy to arbitration" among the obligations that "cannot be specifically enforced" in Alabama. Ala. Code § 8–1–41 (1975). Especially in light of the *Gregory* v. *Ashcroft* presumption, § 2—even if applicable to the States—is most naturally read to pre-empt only Alabama's common-law rule and not the state statute; the statute does not itself make executory arbitration agreements invalid, revocable, or unenforceable, any more than the inclusion of "[a]n obligation to render personal service" in the same statutory provision means that employment contracts are invalid in Alabama. In the case at hand, the specific-enforcement statute appears to provide an adequate ground for the denial of petitioners' motion for a stay.

II

Rather than attempting to defend *Southland* on its merits, petitioners rely chiefly on the doctrine of *stare decisis* in urging us to adhere to our mistaken interpretation of the FAA. See Reply Brief for Petitioners 3–6. In my view, that doctrine is insufficient to save *Southland.*

The majority (*ante,* at 272–273) and JUSTICE O'CONNOR (*ante,* at 283–284) properly focus on whether overruling *Southland* would frustrate the legitimate expectations of people who have drafted and executed contracts in the belief that even state courts will strictly enforce arbitration clauses. I do not doubt that innumerable contracts containing arbitration clauses have been written since 1984, or that arbitrable disputes might yet arise out of a large proportion of these contracts. Some of these contracts might well have been written differently in the absence of *Southland.* Still, I see no reason to think that the costs of overruling *Southland* are unacceptably high. Certainly no reliance interests are involved in cases like the present one, where the applicability of the FAA was not within the contemplation of the parties at the time of contracting. In many other cases, moreover, the parties will simply comply with their arbitration agreement, either on the theory that they should live up to their promises or on the theory that arbitration is the cheapest and best way of resolving their dispute. In a fair number of the remaining cases, the party seeking to enforce an arbitration agreement will be able to get into federal court, where the FAA will apply. And even if access to federal court is impossible (because § 2 creates no independent basis for federal-question jurisdiction), many cases will arise in States whose own law largely parallels the FAA. Only Alabama, Mississippi, and Nebraska still hold all executory arbitration agreements to be unenforceable, though some other States refuse to enforce particular classes of such agreements. See Strickland, The Federal Arbitration Act's Interstate Commerce Requirement: What's Left for State

Arbitration Law?, 21 Hofstra L. Rev. 385, 401–403, and n. 93 (1992).

Quoting *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984), JUSTICE O'CONNOR nonetheless acquiesces in the majority's judgment "because there is no 'special justification' to overrule *Southland*." *Ante*, at 284. Even under this approach, the necessity of "preserv[ing] state autonomy in state courts," *ibid.*, seems sufficient to me.

But suppose that *stare decisis* really did require us to abide by *Southland*'s holding that § 2 applies to the States. The doctrine still would not require us to follow *Southland*'s suggestion that § 2 requires the specific enforcement of the arbitration agreements that it covers. We accord no precedential weight to mere dicta, and this latter suggestion was wholly unnecessary to the decision in *Southland*. The arbitration agreement at issue there, if valid at all with respect to the particular claims in dispute, clearly was subject to specific performance under state law; indeed, the state trial court had already compelled arbitration for all the other claims raised in the complaint. See *Southland*, 465 U. S., at 4; Cal. Civ. Proc. Code Ann. §§ 1281.2, 1281.4 (West 1982). Accordingly, the only question properly before the *Southland* Court was whether § 2 pre-empted a separate state law declaring the arbitration agreement "void" as applied to the remaining claims. See 465 U. S., at 10 (discussing Cal. Corp. Code Ann. § 31512 (West 1977)). The same can be said for *Perry* v. *Thomas*, 482 U. S. 483 (1987), in which we again held that § 2 pre-empted a California statute that (as we had observed in a prior case, see *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Ware*, 414 U. S. 117, 133 (1973)) made certain arbitration clauses "unenforceable." We have subsequently reserved judgment about the extent to which state courts must enforce arbitration agreements through the mechanisms that §§ 3 and 4 of the FAA prescribe for the *federal* courts. See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489

U. S. 468, 477 (1989). Cf. *McDermott Int'l, Inc.* v. *Lloyds Underwriters of London*, 944 F. 2d 1199, 1210 (CA5 1991) ("We conclude from the Supreme Court's opinions that state courts do not necessarily have to grant stays of conflicting litigation or compel arbitration in compliance with the FAA's sections 3 and 4"). In short, we have never actually held, as opposed to stating or implying in dicta, that the FAA requires a state court to stay lawsuits brought in violation of an arbitration agreement covered by § 2.

Because I believe that the FAA imposes no such obligation on state courts, and indeed that the statute is wholly inapplicable in those courts, I would affirm the Alabama Supreme Court's judgment.

Syllabus

SCHLUP *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER

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

No. 93–7901. Argued October 3, 1994—Decided January 23, 1995

Petitioner Schlup, a Missouri prisoner, was convicted of participating in the murder of a fellow inmate and sentenced to death. In this, his second federal habeas petition, he alleged that constitutional error at his trial deprived the jury of critical evidence that would have established his innocence. The District Court declined to reach the petition's merits, holding that Schlup could not satisfy the threshold showing of "actual innocence" required by *Sawyer* v. *Whitley*, 505 U. S. 333, 336, under which a petitioner must demonstrate "by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found" him guilty.

Held: The standard of *Murray* v. *Carrier*, 477 U. S. 478—which requires a habeas petitioner to show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent," *id.*, at 496—rather than the more stringent *Sawyer* standard, governs the miscarriage of justice inquiry when a petitioner who has been sentenced to death raises a claim of actual innocence to avoid a procedural bar to the consideration of the merits of his constitutional claims. Pp. 313–332.

(a) In contrast to the actual innocence claim asserted in *Herrera* v. *Collins*, 506 U. S. 390—that the execution of an innocent person convicted in an error-free trial violates the Eighth Amendment—Schlup's claim is accompanied by an assertion of constitutional error at trial: the ineffectiveness of his counsel and the withholding of evidence by the prosecution. As such, his conviction may not be entitled to the same degree of respect as one that is the product of an error-free trial, and his evidence of innocence need carry less of a burden. In *Herrera*, the evidence of innocence would have had to be strong enough to make the execution "constitutionally intolerable" *even if* the conviction was the product of a fair trial, while here the evidence must establish sufficient doubt about Schlup's guilt to justify the conclusion that his execution would be a miscarriage of justice *unless* his conviction was the product of a fair trial. Pp. 313–317.

(b) The societal interests in finality, comity, and conservation of scarce judicial resources dictate that a habeas court may not ordinarily reach the merits of successive or abusive claims, absent a showing of cause

and prejudice. However, since habeas corpus is, at its core, an equitable remedy, a court must adjudicate even successive claims when required to do so by the ends of justice. Thus, in a trio of cases, this Court firmly established an exception for fundamental miscarriages of justice. *Carrier*, 477 U. S., at 495; *Kuhlmann* v. *Wilson*, 477 U. S. 436; *Smith* v. *Murray*, 477 U. S. 527. To ensure that the fundamental miscarriage of justice exception would remain "rare" and be applied only in the "extraordinary case," while at the same time ensuring that relief would be extended to those who are truly deserving, the Court has explicitly tied the exception to the petitioner's innocence. *Carrier* and *Kuhlmann* also expressed the standard of proof that should govern consideration of such claims: The petitioner must show that the constitutional error "probably" resulted in the conviction of one who was actually innocent. The *Sawyer* Court made no attempt to reconcile its more exacting standard of proof with *Carrier*'s use of "probably." Pp. 317–323.

(c) *Carrier*, rather than *Sawyer*, properly strikes the balance between the societal interests and the individual interest in justice, when the claimed injustice is that constitutional error has resulted in the conviction of one who is actually innocent. Though challenges to the propriety of imposing a death sentence are routinely asserted in capital cases, a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare and must be supported by new reliable evidence that was not presented at trial, evidence obviously unavailable in the vast majority of cases. Thus, the threat to judicial resources, finality, and comity posed by actual innocence claims is significantly less than that posed by sentencing claims. More importantly, the individual interest in avoiding injustice is most compelling in the context of actual innocence, since the quintessential miscarriage of justice is the execution of an innocent person. The less exacting *Carrier* standard of proof reflects the relative importance attached to the ultimate decision. Application of the stricter *Sawyer* standard would give insufficient weight to the correspondingly greater injustice that is implicated by an actual innocence claim. Pp. 323–327.

(d) To satisfy *Carrier*'s "actual innocence" standard, a petitioner must show that, in light of the new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. The focus on actual innocence means that a district court is not bound by the admissibility rules that would govern at trial, but may consider the probative force of relevant evidence that was either wrongly excluded or unavailable at trial. The district court must make a probabilistic determination about what reasonable, properly instructed jurors would do, and it is presumed that a reasonable juror

Syllabus

would consider fairly all of the evidence presented and would conscientiously obey the trial court's instructions requiring proof beyond a reasonable doubt. The *Carrier* standard, although requiring a substantial showing, is by no means equivalent to the standard governing review of insufficient evidence claims. *Jackson* v. *Virginia*, 443 U. S. 307, distinguished. In applying the *Carrier* standard to Schlup's request for an evidentiary hearing, the District Court must assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial. The court is not required to test the new evidence by a standard appropriate for deciding a motion for summary judgment, but may consider how the submission's timing and the affiants' likely credibility bear on the probable reliability of that evidence. Pp. 327–332.

11 F. 3d 738, vacated and remanded.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed a concurring opinion, *post*, p. 332. REHNQUIST, C. J., filed a dissenting opinion, in which KENNEDY and THOMAS, JJ., joined, *post*, p. 334. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 342.

Sean D. O'Brien argued the cause for petitioner. With him on the briefs were *Anthony G. Amsterdam*, *Randy Hertz*, and *Timothy K. Ford.*

Jeremiah W. (Jay) Nixon, Attorney General of Missouri, argued the cause for respondent. With him on the brief were *Stephen D. Hawke* and *Frank A. Jung*, Assistant Attorneys General.*

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*Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Daniel E. Lungren*, Attorney General of California, *George Williamson*, Chief Assistant Attorney General, *Dane R. Gillette*, Deputy Attorney General, and *Mark L. Krotoski*, Special Assistant Attorney General, *James H. Evans*, Attorney General of Alabama, *Bruce M. Botelho*, Attorney General of Alaska, *Grant Woods*, Attorney General of Arizona, *Gale A. Norton*, Attorney General of Colorado, *John M. Bailey*, Chief State's Attorney of Connecticut, *Charles M. Oberly III*, Attorney General of Delaware, *Robert A. Butterworth*, Attorney General of Florida, *Larry EchoHawk*, Attorney General of Idaho, *Roland W. Burris*, Attorney General of Illinois, *Chris Gorman*, Attorney General of Kentucky, *Richard P. Ieyoub*, Attorney General of Louisiana, *Mike Moore*, Attorney General of Mississippi, *Joseph P. Mazurek*, Attorney General of Montana, *Don*

JUSTICE STEVENS delivered the opinion of the Court.

Petitioner Lloyd E. Schlup, Jr., a Missouri prisoner currently under a sentence of death, filed a second federal habeas corpus petition alleging that constitutional error deprived the jury of critical evidence that would have established his innocence. The District Court, without conducting an evidentiary hearing, declined to reach the merits of the petition, holding that petitioner could not satisfy the threshold showing of "actual innocence" required by *Sawyer* v. *Whitley*, 505 U. S. 333 (1992). Under *Sawyer*, the petitioner must show "by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found the petitioner" guilty. *Id.*, at 336. The Court of Appeals affirmed. We granted certiorari to consider whether the *Sawyer* standard provides adequate protection against the kind of miscarriage of justice that would result from the execution of a person who is actually innocent.

I

On February 3, 1984, on Walk 1 of the high security area of the Missouri State Penitentiary, a black inmate named Arthur Dade was stabbed to death. Three white inmates from

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Stenberg, Attorney General of Nebraska, *Frankie Sue Del Papa*, Attorney General of Nevada, *Deborah T. Poritz*, Attorney General of New Jersey, *Tom Udall*, Attorney General of New Mexico, *Michael F. Easley*, Attorney General of North Carolina, *Lee Fisher*, Attorney General of Ohio, *Susan B. Loving*, Attorney General of Oklahoma, *Ernest D. Preate, Jr.*, Attorney General of Pennsylvania, *T. Travis Medlock*, Attorney General of South Carolina, *Mark Barnett*, Attorney General of South Dakota, *Charles W. Burson*, Attorney General of Tennessee, *Dan Morales*, Attorney General of Texas, *Jan Graham*, Attorney General of Utah, *James S. Gilmore III*, Attorney General of Virginia, and *Joseph B. Meyer*, Attorney General of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson*.

Harold R. Tyler, Jr., and *Eric M. Freedman* filed a brief of *amici curiae* for Five Innocent Former Death Row Inmates et al.

Walk 2, including petitioner, were charged in connection with Dade's murder.

At petitioner's trial in December 1985, the State's evidence consisted principally of the testimony of two corrections officers who had witnessed the killing. On the day of the murder, Sergeant Roger Flowers was on duty on Walk 1 and Walk 2, the two walks on the lower floor of the prison's high security area. Flowers testified that he first released the inmates on Walk 2 for their noon meal and relocked their cells. After unlocking the cells to release the inmates on Walk 1, Flowers noticed an inmate named Rodnie Stewart moving against the flow of traffic carrying a container of steaming liquid. Flowers watched as Stewart threw the liquid in Dade's face. According to Flowers, Schlup then jumped on Dade's back, and Robert O'Neal joined in the attack. Flowers shouted for help, entered the walk, and grabbed Stewart as the two other assailants fled.

Officer John Maylee witnessed the attack from Walk 7, which is three levels and some 40–50 feet above Walks 1 and 2.[1] Maylee first noticed Schlup, Stewart, and O'Neal as they were running from Walk 2 to Walk 1 against the flow of traffic. According to Maylee's testimony, Stewart threw a container of liquid at Dade's face, and then Schlup jumped on Dade's back. O'Neal then stabbed Dade several times in the chest, ran down the walk, and threw the weapon out a window. Maylee did not see what happened to Schlup or Stewart after the stabbing.

The State produced no physical evidence connecting Schlup to the killing, and no witness other than Flowers and Maylee testified to Schlup's involvement in the murder.[2]

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[1] Maylee was unavailable to testify at Schlup's trial. Testimony from Maylee's pretrial deposition was admitted in evidence and was read to the jury.

[2] In contrast, the evidence of the involvement of Stewart and O'Neal in Dade's murder was substantial. Stewart, for example, was apprehended

Schlup's defense was that the State had the wrong man.[3] He relied heavily on a videotape from a camera in the prisoners' dining room. The tape showed that Schlup was the first inmate to walk into the dining room for the noon meal, and that he went through the line and got his food. Approximately 65 seconds after Schlup's entrance, several guards ran out of the dining room in apparent response to a distress call. Twenty-six seconds later, O'Neal ran into the dining room, dripping blood.[4] Shortly thereafter, Schlup and O'Neal were taken into custody.

Schlup contended that the videotape, when considered in conjunction with testimony that he had walked at a normal pace from his cell to the dining room,[5] demonstrated that he could not have participated in the assault. Because the videotape showed conclusively that Schlup was in the dining room 65 seconds before the guards responded to the distress call, a critical element of Schlup's defense was determining when the distress call went out. Had the distress call sounded shortly after the murder, Schlup would not have had time to get from the prison floor to the dining room, and

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by Flowers during the struggle itself. And when O'Neal was taken into custody, his clothes were covered with blood and he was bleeding from lacerations on his right hand.

[3] Schlup did not testify at the guilt phase of the trial. At the sentencing hearing, Schlup did testify and maintained his innocence of the offense. He continued to maintain his innocence even after the jury had sentenced him to death.

[4] After stabbing Dade, O'Neal broke a window with his hand and threw the knife out the window. That resulted in multiple lacerations to his right hand. Before leaving the prison floor, O'Neal paused briefly at a utilities sink on Walk 2 to try to wash off the blood, and then continued on to the dining room.

O'Neal was followed into the dining room by inmate Randy Jordan, who is identified in some affidavits attesting to petitioner's innocence as the third participant in the crime. See *infra*, at 308–309. However, Jordan's name was not mentioned at Schlup's trial.

[5] Schlup's cell was at the end of Walk 2, closest to the dining room.

thus he could not have participated in the murder. Conversely, had there been a delay of several minutes between the murder and the distress call, Schlup might have had sufficient time to participate in the murder and still get to the dining room over a minute before the distress call went out.[6]

The prosecutor adduced evidence tending to establish that such a delay had in fact occurred. First, Flowers testified that none of the officers on the prison floor had radios, thus implying that neither he nor any of the other officers on the floor was able to radio for help when the stabbing occurred. Second, Flowers testified that after he shouted for help, it took him "a couple [of] minutes" to subdue Stewart.[7] Flowers then brought Stewart downstairs, encountered Captain James Eberle, and told Eberle that there had been a "disturbance."[8] Eberle testified that he went upstairs to the prison floor, and then radioed for assistance. Eberle estimated that the elapsed time from when he first saw Flowers

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[6] A necessary element of Schlup's defense was that Flowers and Maylee were mistaken in their identification of Schlup as one of the participants in the murder. Schlup suggested that Flowers had taken a visitor to Schlup's cell just 30 minutes before the murder. Schlup argued that Flowers had therefore had Schlup "on the brain," Trial Tr. 493–494, thus explaining why, in the confusion surrounding the murder, Flowers might have mistakenly believed that he had seen Schlup.

Schlup argued that Maylee's identification was suspect because Maylee was three floors away from the murder and did not have an unobstructed view of the murder scene. Schlup further suggested that Maylee's identification of Schlup had been influenced by a postincident conversation between Maylee and another officer who had talked to Flowers.

Schlup also argued that there were inconsistencies between the description of the murder provided by Flowers and that provided by Maylee. For example, Maylee testified that he saw Schlup, Stewart, and O'Neal running together against the flow of traffic, and that the three men had stopped when they encountered Dade. See *id.*, at 332. Flowers noticed only Stewart running against the flow of traffic, and he testified that O'Neal and Schlup were at the other end of the walk on the far side of Dade. See *id.*, at 249.

[7] *Id.*, at 243.

[8] *Id.*, at 245.

until he radioed for help was "approximately a minute."[9] The prosecution also offered testimony from a prison investigator who testified that he was able to run from the scene of the crime to the dining room in 33 seconds and to walk the distance at a normal pace in a minute and 37 seconds.

Neither the State nor Schlup was able to present evidence establishing the exact time of Schlup's release from his cell on Walk 2, the exact time of the assault on Walk 1, or the exact time of the radio distress call. Further, there was no evidence suggesting that Schlup had hurried to the dining room.[10]

After deliberating overnight, the jury returned a verdict of guilty. Following the penalty phase, at which the victim of one of Schlup's prior offenses testified extensively about the sordid details of that offense,[11] the jury sentenced Schlup to death. The Missouri Supreme Court affirmed Schlup's conviction and death sentence, *State* v. *Schlup*, 724 S. W. 2d 236 (Mo. 1987), and this Court denied certiorari, *Schlup* v. *Missouri*, 482 U. S. 920 (1987).[12]

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[9] *Id.*, at 212, 214–215.

[10] In fact, the evidence presented was to the contrary. Two inmates, Bernard Bailey and Arthur St. Peter, testified that they were behind Schlup in line on the way to the dining room and that they had all walked at a normal pace. Lieutenant Robert Faherty, the corrections officer on duty in the corridor leading from the prison floor to the dining room, testified that Schlup was the first inmate into the corridor on the day of the murder. Faherty also testified that he saw Schlup pause and yell something out one of the windows in the corridor, and that he told Schlup to move on. Faherty testified that nothing else unusual had occurred while Schlup was in the corridor.

On the other hand, both Maylee's testimony and the videotape establish that O'Neal ran from Walk 1 to the dining room.

[11] Schlup had been convicted of sodomy and assault in connection with a series of attacks on a cellmate while he was being held in a county jail.

[12] The other alleged participants in the crime were convicted in earlier, separate trials. O'Neal, who did the stabbing, was sentenced to death, see *State* v. *O'Neal*, 718 S. W. 2d 498 (Mo. 1986); Stewart, who was apprehended by Flowers at the scene, was sentenced to 50 years' imprisonment

II

On January 5, 1989, after exhausting his state collateral remedies,[13] Schlup filed a *pro se* petition for a federal writ of habeas corpus, asserting the claim, among others, that his trial counsel was ineffective for failing to interview and to call witnesses who could establish Schlup's innocence.[14] The District Court concluded that Schlup's ineffectiveness claim was procedurally barred, and it denied relief on that claim without conducting an evidentiary hearing.[15] The Court of Appeals affirmed, though it did not rely on the alleged procedural bar. *Schlup* v. *Armontrout*, 941 F. 2d 631 (CA8 1991). Instead, based on its own examination of the record, the Court found that trial counsel's performance had not been constitutionally ineffective, both because counsel had reviewed statements that Schlup's potential witnesses had given to prison investigators, and because the testimony of those witnesses "would be repetitive of the testimony to be presented at trial." *Id.*, at 639.[16] But cf. 11 F. 3d 738, 746,

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without eligibility for probation or parole, see *State* v. *Stewart*, 714 S. W. 2d 724 (Mo. App. 1986).

[13] The denial of Schlup's motion for postconviction relief was affirmed by the Missouri Supreme Court on October 18, 1988. See *Schlup* v. *State*, 758 S. W. 2d 715 (Mo. 1988).

[14] Schlup identified three nonparticipant witnesses who he claimed had witnessed the murder: Van Robinson, Lamont Griffin Bey, and Ricky McCoy. Schlup also faulted trial counsel for failing to interview Randy Jordan, whom Schlup identified as the third participant in the murder.

[15] Schlup had presented the ineffectiveness claim in his state postconviction motion, but had failed to raise it on appeal. See *Schlup* v. *Armontrout*, No. 89–0020C(3), 1989 U. S. Dist. LEXIS 18285, *11–*13 (ED Mo., May 31, 1989).

Schlup's first federal habeas petition also raised several other claims, all of which were denied either as procedurally barred or on the merits.

[16] The Court of Appeals also addressed Schlup's other claims. Over Judge Heaney's dissent, the court rejected Schlup's claim that his counsel had been ineffective for failing to adduce available mitigating evidence at the penalty hearing. *Schlup* v. *Armontrout*, 941 F. 2d, at 639. The court

n. 3 (CA8 1993) (Heaney, J., dissenting) (challenging the conclusion that such testimony would have been "repetitive"). The Court of Appeals denied a petition for rehearing and suggestion for rehearing en banc, *Schlup* v. *Armontrout*, 945 F. 2d 1062 (1991), and we denied a petition for certiorari, 503 U. S. 909 (1992).

On March 11, 1992, represented by new counsel, Schlup filed a second federal habeas corpus petition. That petition raised a number of claims, including that (1) Schlup was actually innocent of Dade's murder, and that his execution would therefore violate the Eighth and Fourteenth Amendments, cf. *Herrera* v. *Collins*, 506 U. S. 390 (1993); (2) trial counsel was ineffective for failing to interview alibi witnesses; and (3) the State had failed to disclose critical exculpatory evidence. The petition was supported by numerous affidavits from inmates attesting to Schlup's innocence.

The State filed a response arguing that various procedural bars precluded the District Court from reaching the merits of Schlup's claims and that the claims were in any event meritless. Attached to the State's response were transcripts of inmate interviews conducted by prison investigators just five days after the murder. One of the transcripts contained an interview with John Green, an inmate who at the time was the clerk for the housing unit. In his interview, Green stated that he had been in his office at the end of the walks when the murder occurred. Green stated that Flowers had

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also rejected Schlup's separate claim challenging the denial of his request for an evidentiary hearing in the District Court. Schlup had requested such a hearing to develop evidence so that he could in turn challenge the failure of the state court to grant his request for a continuance of his state postconviction proceedings. Schlup had requested that continuance to obtain additional evidence to support his claim of innocence. The Court of Appeals held that Schlup's challenge to the state court's failure to grant a continuance was not cognizable in a federal habeas corpus action. *Id.*, at 642.

told him to call for help, and that Green had notified base of the disturbance shortly after it began.[17]

Schlup immediately filed a traverse arguing that Green's affidavit provided conclusive proof of Schlup's innocence. Schlup contended that Green's statement demonstrated that a call for help had gone out shortly after the incident. Because the videotape showed that Schlup was in the dining room some 65 seconds before the guards received the distress call, Schlup argued that he could not have been involved in Dade's murder. Schlup emphasized that Green's statement was not likely to have been fabricated, because at the time of Green's interview, neither he nor anyone else would have realized the significance of Green's call to base. Schlup tried to buttress his claim of innocence with affidavits from inmates who stated that they had witnessed the event and that Schlup had not been present.[18] Two of those affi-

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[17] "BROOKS: John, whenever you saw Dade fall what did you do then?

"GREEN: I stepped out of the office and I heard Sgt. Flowers calling for officers cause they had had a fight. Couldn't get nobody so he told me to call base to notify them of the fight and that's what I did.

"DEARIXON: That's all I have, John. Thank you very much." Response to Order To Show Cause Why a Writ of Habeas Corpus Should Not Be Granted, Exhibit T (Transcripts of Inmate Interviews), p. 31.

If the total time required for Green to respond to Flowers' instruction and for the base to send out a distress call in response to Green's call amounted to a mere 15–17 seconds, O'Neal running at top speed would have had 8–10 seconds to wash his hands and still would have been able to arrive in the dining room some 26 seconds after the distress call.

[18] In the District Court, Schlup attempted to supplement the record with several detailed affidavits from inmates attesting to his innocence. For example, Lamont Griffin Bey, a black inmate, submitted an affidavit in which he stated: "The first thing I saw of the fight was Rodney *[sic]* Stewart throw liquid in Arthur Dade's face, and O'Neal stab him. . . . I knew Lloyd Schlup at that time, but we were not friends. Lloyd Schlup was not present at the scene of the fight." Affidavit of Lamont Griffin Bey, pp. 2–3 (Apr. 7, 1993). Griffin Bey also stated: "When this happened, there was a lot of racial tension in the prison. . . . I would not stick my neck out to help a white person under these circumstances normally, but

davits suggested that Randy Jordan—who occupied the cell between O'Neal and Stewart in Walk 2, and who, as noted above, see n. 4, *supra*, is shown on the videotape arriving at lunch with O'Neal—was the third assailant.

On August 23, 1993, without holding a hearing, the District Court dismissed Schlup's second habeas petition and vacated the stay of execution that was then in effect. The District Court concluded that Schlup's various filings did not provide adequate cause for failing to raise his new claims more promptly. Moreover, the court concluded that Schlup had failed to meet the *Sawyer* v. *Whitley*, 505 U. S. 333 (1992), standard for showing that a refusal to entertain those claims would result in a fundamental miscarriage of justice. In its discussion of the evidence, the court made no separate comment on the significance of Green's statement.[19]

On September 7, 1993, petitioner filed a motion to set aside the order of dismissal, again calling the court's attention to

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I am willing to testify because I know Lloyd Schlup is innocent." *Id.*, at 4.

Similarly, inmate Donnell White swore an affidavit in which he stated: "Three white guys were coming the opposite way. One of them had a tumbler of something that he threw in [Dade's] face. One or two of the other ones started sticking [Dade] with an ice-pick-type knife." Affidavit of Donnell White, at 1 (Apr. 21, 1993). White further stated: "I have seen Lloyd Schlup, and I know who he is. He is definitely not one of the guys I saw jump Arthur Dade . . . . I know that one of the three men involved has never been prosecuted, and I know that Lloyd Schlup is innocent. I barely know Lloyd Schlup, and I have no reason to lie for him. I told the investigators that I didn't see anything because I didn't want to get involved." *Id.*, at 3.

Though the District Court ultimately denied Schlup's motion to supplement the record, the inmate affidavits are part of the record on appeal.

[19] The District Court focused primarily on the "suspect" nature of affidavits that are produced after a long delay, cf. *Herrera* v. *Collins*, 506 U. S. 390, 423–424 (1993) (O'Connor, J., concurring), and that come from inmates. The court concluded that the affidavits presented by Schlup, when considered against the positive identifications made by Flowers and Maylee, failed to constitute a sufficiently persuasive showing of actual innocence. App. 79.

Green's statement. Two days later, Schlup filed a supplemental motion stating that his counsel had located John Green[20] and had obtained an affidavit from him. That affidavit confirmed Green's postincident statement that he had called base shortly after the assault. Green's affidavit also identified Jordan rather than Schlup as the third assailant.[21]

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[20] Green had been released from prison on January 29, 1986. Green Affidavit, at 4 (Sept. 7, 1993).

[21] Green's affidavit stated:

"I looked down one walk, and I saw Randy Jordan holding Arthur Dade. Jordan was standing behind Dade, and had Dade's arms pinned to his sides from behind. I saw Robert O'Neal stab Dade several times in the chest while Jordan was holding him.

"Dade broke loose and ran straight toward me. I saw him collide with Rodnie Stewart and fall to the ground near the paint storage area. Sergeant Flowers hollered for help. I think there was so much noise that he didn't think the other guards in the Housing Unit heard him, so he told me to call base. He was on his way to break up the fight when he told me to call base. I immediately went into the office, picked up the phone, and called base.

"A sergeant at the base picked up the phone. I told him there was a fight in Housing Unit 5A. He said something like, 'OK,' and I hung up the phone." *Id.*, at 2–3.

Green stated that his call to base came "within seconds of Dade hitting the ground. It could not have been more than a half minute or a minute after he was stabbed by Jordan and O'Neal. It happened very fast." *Id.*, at 4.

Green also explained why he had earlier denied witnessing the murder: "I told [investigators] I didn't [see the murder] because I was concerned about my safety. I know that Jordan and O'Neal were in the Aryan Brotherhood, and if I said I saw them do it, they could easily have me killed." *Id.*, at 3–4.

Green continued: "If I had been contacted before Schlup's trial, I would have told his attorney that he was not there when Dade was stabbed, and I would have testified that I called base within seconds after Dade hit the ground. I might have been reluctant to snitch on Jordan and O'Neal. I'm not afraid now because I haven't been in prison for more than 7½ years, and I have been working steadily ever since. I have no intention of going back to prison." *Id.*, at 6.

The District Court denied the motion and the supplemental motion without opinion.

Petitioner then sought from the Court of Appeals a stay of execution pending the resolution of his appeal. Relying on Justice Powell's plurality opinion in *Kuhlmann* v. *Wilson*, 477 U. S. 436 (1986), Schlup argued that the District Court should have entertained his second habeas corpus petition, because he had supplemented his constitutional claim "with a colorable claim of factual innocence." *Id.*, at 454.

On October 15, 1993, the Court of Appeals denied the stay application. In an opinion that was subsequently vacated, the majority held that petitioner's claim of innocence was governed by the standard announced in *Sawyer* v. *Whitley*, 505 U. S. 333 (1992), and it concluded that under that standard, the evidence of Schlup's guilt that had been adduced at trial foreclosed consideration of petitioner's current constitutional claims.[22]

Judge Heaney dissented. Relying on Green's affidavit, the videotape, and the affidavits of four other eyewitnesses, Judge Heaney concluded that the petitioner had met both the *Kuhlmann* standard and a proper reading of the *Sawyer* standard.[23] Cf. *infra*, at 331. He believed that the District Court should have conducted an evidentiary hearing in which the affiants would have been subjected to examination by the State so "their credibility could be accurately determined."[24]

In the meantime, petitioner's counsel obtained an affidavit from Robert Faherty, the former lieutenant at the prison whom Schlup had passed on the way to lunch on the day of the murder and who had reprimanded Schlup for shouting out the window. See n. 10, *supra*. Faherty's affidavit stated that Schlup had been in Faherty's presence for at least

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[22] *Schlup* v. *Delo*, No. 93–3272, 1993 WL 409815, *3 (CA8, Oct. 15, 1993).
[23] *Id.*, at *7.
[24] *Id.*, at *5.

two and a half minutes; that Schlup was walking at a leisurely pace; and that Schlup "was not perspiring or breathing hard, and he was not nervous." Affidavit of Robert Faherty ¶¶ 4, 6 (Oct. 26, 1993).[25]

On November 15, 1993, the Court of Appeals vacated its earlier opinion and substituted a more comprehensive analysis of the law to support its decision to deny Schlup's request for a stay. 11 F. 3d 738. The majority adhered to its earlier conclusion that *Sawyer* stated the appropriate standard for evaluating Schlup's claim of actual innocence. 11 F. 3d, at 740. The opinion also contained an extended discussion of Schlup's new evidence. The court noted in particular that Green's new affidavit was inconsistent in part with both his prison interview and his testimony at the Stewart trial. *Id.*, at 742. The court viewed Faherty's affidavit as simply "an effort to embellish and expand upon his testimony" and concluded "that a habeas court should not permit retrial on such a basis." *Id.*, at 743.

Judge Heaney again dissented, concluding that Schlup had "presented truly persuasive evidence that he is actually innocent," and that the District Court should therefore have addressed the merits of Schlup's constitutional claims. *Id.*, at 744. Judge Heaney also argued that Schlup's ineffectiveness claim was substantial. He noted that Schlup's trial counsel failed to conduct individual interviews with Griffin Bey, McCoy, or any of the other inmates who told investigators that they had seen the killing. Moreover, counsel failed to interview Green about his statement that he had called

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[25] Faherty had testified at Schlup's trial, but he had not been asked about the significant details of his encounter with Schlup that are recited in his affidavit. Faherty Affidavit ¶ 9 (Oct. 26, 1993). Faherty left the Department of Corrections in 1989. He stated in his affidavit that he had been prompted to come forward after hearing about Schlup's case through an article in the local newspaper. *Id.*, ¶ 11.

base. In fact, counsel apparently failed to conduct individual interviews with any of the potential witnesses to the crime.

Judge Heaney adhered to his conclusion that Schlup's counsel was ineffective, even though counsel allegedly had reviewed 100 interviews conducted by prison investigators.[26] Judge Heaney argued that counsel's review of the interview transcripts—rather than demonstrating counsel's effectiveness—made counsel's failure to conduct his own interviews with Green and the few inmates who admitted seeing the attack even more troubling. See *id.*, at 747, n. 5. Judge Heaney concluded that Schlup's case should be remanded to the District Court to conduct an evidentiary hearing and, if appropriate, to address the merits of Schlup's constitutional claims.

On November 17, 1993, the Court of Appeals denied a suggestion for rehearing en banc. Dissenting from that denial, three judges joined an opinion describing the question whether the majority should have applied the standard announced in *Sawyer* v. *Whitley*, *supra*, rather than the *Kuhlmann* standard as "a question of great importance in habeas corpus jurisprudence." 11 F. 3d, at 755. We granted certiorari to consider that question. 511 U. S. 1003 (1994).[27]

III

As a preliminary matter, it is important to explain the difference between Schlup's claim of actual innocence and the

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[26] The transcripts of the individual interviews conducted by the prison investigators were relatively brief: The entire written transcript of the investigators' interview with Green, for example, takes up less than one page. The vast majority of the interviews consisted of simple statements that the interviewee had not seen Dade's killing.

[27] Though the Court of Appeals denied Schlup's motion for a stay of execution, the Governor of Missouri granted a stay one day before Schlup's execution date. The Governor then ordered a Board of Inquiry to conduct clemency proceedings. Those proceedings are apparently continuing.

claim of actual innocence asserted in *Herrera* v. *Collins*, 506 U. S. 390 (1993). In *Herrera*, the petitioner advanced his claim of innocence to support a novel substantive constitutional claim, namely, that the execution of an innocent person would violate the Eighth Amendment.[28] Under petitioner's theory in *Herrera*, even if the proceedings that had resulted in his conviction and sentence were entirely fair and error free, his innocence would render his execution a "constitutionally intolerable event." *Id.*, at 419 (O'Connor, J., concurring).

Schlup's claim of innocence, on the other hand, is procedural, rather than substantive. His constitutional claims are based not on his innocence, but rather on his contention that the ineffectiveness of his counsel, see *Strickland* v. *Washington*, 466 U. S. 668 (1984), and the withholding of evidence by the prosecution, see *Brady* v. *Maryland*, 373 U. S. 83 (1963), denied him the full panoply of protections afforded to criminal defendants by the Constitution. Schlup, however, faces procedural obstacles that he must overcome before a federal court may address the merits of those constitutional claims. Because Schlup has been unable to establish "cause and prejudice" sufficient to excuse his failure to present his evidence in support of his first federal petition, see *McCleskey* v. *Zant*, 499 U. S. 467, 493–494 (1991),[29] Schlup may obtain review of his constitutional claims only if he falls

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[28] In *Herrera*, we assumed for the sake of argument that "in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim." 506 U. S., at 417.

[29] Schlup argued in the District Court that the lack of diligence of his appointed postconviction counsel, coupled with problems created by the State, established cause and prejudice. See App. 38–43 (state postconviction proceedings); *id.*, at 43–45 (proceedings on first federal habeas). That argument was rejected by the District Court and the Court of Appeals, and petitioner does not renew it in this Court.

within the "narrow class of cases . . . implicating a fundamental miscarriage of justice," *id.*, at 494. Schlup's claim of innocence is offered only to bring him within this "narrow class of cases."

Schlup's claim thus differs in at least two important ways from that presented in *Herrera*. First, Schlup's claim of innocence does not by itself provide a basis for relief. Instead, his claim for relief depends critically on the validity of his *Strickland* and *Brady* claims.[30] Schlup's claim of innocence is thus "not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." *Herrera*, 506 U. S., at 404; see also 11 F. 3d, at 740.[31]

More importantly, a court's assumptions about the validity of the proceedings that resulted in conviction are fundamentally different in Schlup's case than in Herrera's. In *Herrera*, petitioner's claim was evaluated on the assumption that the trial that resulted in his conviction had been error free. In such a case, when a petitioner has been "tried before a jury of his peers, with the full panoply of protections that our Constitution affords criminal defendants," 506 U. S., at 419 (O'Connor, J., concurring), it is appropriate to apply an

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[30] In light of our conclusion that the courts below applied the wrong standard in evaluating Schlup's gateway innocence claim, see *infra*, at 326–327, we need not express a view concerning the merits of Schlup's underlying constitutional claims.

[31] In his submissions to the federal courts, Schlup has consistently argued that his execution would violate the Eighth and Fourteenth Amendments because he is actually innocent. That *Herrera* claim was rejected in the District Court and in the Court of Appeals. In the dissent from the denial of rehearing en banc, three judges stated that they were persuaded by Judge Heaney's dissent that there was "at least a substantial likelihood" that Schlup could meet even the extraordinarily high showing required by *Herrera*. We denied certiorari on Schlup's *Herrera* claim, and accordingly we express no opinion as to its merits.

"'extraordinarily high'" standard of review, *id.*, at 426 (O'CONNOR, J., concurring).[32]

Schlup, in contrast, accompanies his claim of innocence with an assertion of constitutional error at trial. For that reason, Schlup's conviction may not be entitled to the same degree of respect as one, such as Herrera's, that is the product of an error-free trial. Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred claim. However, if a petitioner such as Schlup presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error, the petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims.

Consequently, Schlup's evidence of innocence need carry less of a burden. In *Herrera* (on the assumption that petitioner's claim was, in principle, legally well founded), the evidence of innocence would have had to be strong enough to make his execution "constitutionally intolerable" *even if* his conviction was the product of a fair trial. For Schlup, the evidence must establish sufficient doubt about his guilt to justify the conclusion that his execution would be a miscarriage of justice *unless* his conviction was the product of a fair trial.

Our rather full statement of the facts illustrates the foregoing distinction between a substantive *Herrera* claim and Schlup's procedural claim. Three items of evidence are particularly relevant: the affidavit of black inmates attesting to the innocence of a white defendant in a racially motivated killing; the affidavit of Green describing his prompt call for

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[32] In *Herrera*, it was not necessary to determine the appropriate standard of review because petitioner had failed to make "a truly persuasive demonstration of 'actual innocence'" under any reasonable standard.

assistance; and the affidavit of Lieutenant Faherty describing Schlup's unhurried walk to the dining room. If there were no question about the fairness of the criminal trial, a *Herrera*-type claim would have to fail unless the federal habeas court is itself convinced that those new facts unquestionably establish Schlup's innocence. On the other hand, if the habeas court were merely convinced that those new facts raised sufficient doubt about Schlup's guilt to undermine confidence in the result of the trial without the assurance that that trial was untainted by constitutional error, Schlup's threshold showing of innocence would justify a review of the merits of the constitutional claims.

IV

As this Court has repeatedly noted, "[a]t common law, res judicata did not attach to a court's denial of habeas relief." *McCleskey*, 499 U. S., at 479. Instead, "'a renewed application could be made to every other judge or court in the realm, and each court or judge was bound to consider the question of the prisoner's right to a discharge independently, and not to be influenced by the previous decisions refusing discharge.'" *Ibid.*, quoting W. Church, Writ of Habeas Corpus § 386, p. 570 (2d ed. 1893).

The Court has explained the early tolerance of successive petitions, in part, by the fact that the writ originally performed only the narrow function of testing either the jurisdiction of the sentencing court or the legality of Executive detention. See *McCleskey*, 499 U. S., at 478; *Wainwright* v. *Sykes*, 433 U. S. 72, 78 (1977).[33] The scope of the writ later expanded beyond its original narrow purview to encompass

[33] As this Court noted in *Wainwright* v. *Sykes*, there have been "divergent discussions of the historic role of federal habeas corpus." 433 U. S., at 77, n. 6. One recent commentator has offered a new perspective on the history of the writ. See Liebman, Apocalypse Next Time?: The Anachronistic Attack on Habeas Corpus/Direct Review Parity, 92 Colum. L. Rev. 1997 (1992).

review of constitutional error that had occurred in the proceedings leading to conviction. See *McCleskey*, 499 U. S., at 478–479; *Wainwright* v. *Sykes*, 433 U. S., at 79. That broadening of the scope of the writ created the risk that repetitious filings by individual petitioners might adversely affect the administration of justice in the federal courts. Such filings also posed a threat to the finality of state-court judgments and to principles of comity and federalism. See, *e. g.*, *McCleskey*, 499 U. S., at 491; *Murray* v. *Carrier*, 477 U. S. 478, 487 (1986).

To alleviate the increasing burdens on the federal courts and to contain the threat to finality and comity, Congress attempted to fashion rules disfavoring claims raised in second and subsequent petitions. For example, in 1966, Congress amended 28 U. S. C. § 2244(b) "to introduce 'a greater degree of finality of judgments in habeas corpus proceedings.'" *Kuhlmann* v. *Wilson*, 477 U. S., at 450, quoting S. Rep. No. 1797, 89th Cong., 2d Sess., 2 (1966) (Senate Report); see also *McCleskey*, 499 U. S., at 486. Similarly, in 1976, Congress promulgated Rule 9(b) of the Rules Governing Habeas Corpus Proceedings in part to deal with the problem of repetitive filings.

These same concerns resulted in a number of recent decisions from this Court that delineate the circumstances under which a district court may consider claims raised in a second or subsequent habeas petition. In those decisions, the Court held that a habeas court may not ordinarily reach the merits of successive claims, *Kuhlmann* v. *Wilson*, 477 U. S. 436 (1986), or abusive claims, *McCleskey*, 499 U. S., at 493, absent a showing of cause and prejudice, see *Wainwright* v. *Sykes*, 433 U. S. 72 (1977).[34] The application of cause and

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[34] A "'successive petition' raises grounds identical to those raised and rejected on the merits on a prior petition." *Kuhlmann* v. *Wilson*, 477 U. S., at 444, n. 6 (plurality opinion). An "abusive petition" occurs "where a prisoner files a petition raising grounds that were available but not relied upon in a prior petition, or engages in other conduct that 'disentitle[s] him

prejudice to successive and abusive claims conformed to this Court's treatment of procedurally defaulted claims. *Carrier*, 477 U. S. 478; see also *McCleskey*, 499 U. S., at 490–491 ("The doctrines of procedural default and abuse of the writ implicate nearly identical concerns flowing from the significant costs of federal habeas corpus review"). See generally *Sawyer*, 505 U. S., at 338–340. The net result of this congressional and judicial action has been the adoption in habeas corpus of a "'qualified application of the doctrine of res judicata.'" *McCleskey*, 499 U. S., at 486, quoting Senate Report, at 2.[35]

At the same time, the Court has adhered to the principle that habeas corpus is, at its core, an equitable remedy. This Court has consistently relied on the equitable nature of habeas corpus to preclude application of strict rules of res judicata. Thus, for example, in *Sanders* v. *United States*, 373 U. S. 1 (1963), this Court held that a habeas court must adjudicate even a successive habeas claim when required to do so by the "ends of justice." *Id.*, at 15–17; see also *McCleskey*, 499 U. S., at 495. The *Sanders* Court applied this equitable exception even to petitions brought under 28

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to the relief he seeks.'" *Ibid.*, quoting *Sanders* v. *United States*, 373 U. S. 1, 17–19 (1963).

[35] This Court has repeatedly noted the interplay between statutory language and judicially managed equitable considerations in the development of habeas corpus jurisprudence. For example, in *McCleskey*, the Court noted that the doctrine of abuse of the writ of habeas corpus "refers to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions." 499 U. S., at 489. Similarly, in *Wainwright* v. *Sykes*, the Court noted its "historic willingness to overturn or modify its earlier views of the scope of the writ, even where the statutory language authorizing judicial action has remained unchanged." 433 U. S., at 81; see also *Kuhlmann*, 477 U. S., at 446–447 (explaining that the Court has both expanded and limited the scope of the writ); *Brecht* v. *Abrahamson*, 507 U. S. 619, 633 (1993) ("We have filled the gaps of the habeas corpus statute with respect to other matters").

U. S. C. § 2255, though the language of § 2255 contained no reference to an "ends of justice" inquiry. 373 U. S., at 12–15.

We firmly established the importance of the equitable inquiry required by the ends of justice in "a trio of 1986 decisions" handed down on the same day. *Sawyer*, 505 U. S., at 339 (referring to *Kuhlmann* v. *Wilson*, 477 U. S. 436, *Murray* v. *Carrier*, 477 U. S. 478, and *Smith* v. *Murray*, 477 U. S. 527). In *Kuhlmann*, seven Members of this Court squarely rejected the argument that in light of the 1966 amendments, "federal courts no longer must consider the 'ends of justice' before dismissing a successive petition." 477 U. S., at 451 (plurality opinion); *id.*, at 468–471 (Brennan, J., dissenting); *id.*, at 476–477 (STEVENS, J., dissenting); see also *Sawyer*, 505 U. S., at 339 (noting that in *Kuhlmann*, "[w]e held that despite the removal of [the reference to the ends of justice] from 28 U. S. C. § 2244(b) in 1966, the miscarriage of justice exception would allow successive claims to be heard"). Thus, while recognizing that successive petitions are generally precluded from review, Justice Powell's plurality opinion expressly noted that there are "limited circumstances under which the interests of the prisoner in relitigating constitutional claims held meritless on a prior petition may outweigh the countervailing interests served by according finality to the prior judgment." 477 U. S., at 452. Similarly, writing for the Court in *Carrier*, JUSTICE O'CONNOR observed that the Court had adopted the cause and prejudice standard in part because of its confidence that that standard would provide adequate protection to "'victims of a fundamental miscarriage of justice,'" 477 U. S., at 495–496, quoting *Engle* v. *Isaac*, 456 U. S. 107, 135 (1982); however, JUSTICE O'CONNOR also noted that the Court has candidly refused to "pretend that this will always be true," *Carrier*, 477 U. S., at 496. For that reason, "'[i]n appropriate cases,' the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a funda-

mentally unjust incarceration.'" *Id.*, at 495, quoting *Engle* v. *Isaac*, 456 U. S., at 135; see also *Smith* v. *Murray*, 477 U. S., at 537. In subsequent cases, we have consistently reaffirmed the existence and importance of the exception for fundamental miscarriages of justice. See, *e. g.*, *Sawyer*, 505 U. S., at 339–340; *McCleskey*, 499 U. S., at 494–495; *Dugger* v. *Adams*, 489 U. S. 401, 414 (1989) (Blackmun, J., dissenting).

To ensure that the fundamental miscarriage of justice exception would remain "rare" and would only be applied in the "extraordinary case," while at the same time ensuring that the exception would extend relief to those who were truly deserving, this Court explicitly tied the miscarriage of justice exception to the petitioner's innocence. In *Kuhlmann*, for example, Justice Powell concluded that a prisoner retains an overriding "interest in obtaining his release from custody if he is innocent of the charge for which he was incarcerated. That interest does not extend, however, to prisoners whose guilt is conceded or plain." 477 U. S., at 452. Similarly, JUSTICE O'CONNOR wrote in *Carrier* that "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default." 477 U. S., at 496; see also *Smith* v. *Murray*, 477 U. S., at 537, quoting *Carrier*, 477 U. S., at 496.

The general rule announced in *Kuhlmann*, *Carrier*, and *Smith*, and confirmed in this Court's more recent decisions, rests in part on the fact that habeas corpus petitions that advance a substantial claim of actual innocence are extremely rare.[36] Judge Friendly's observation a quarter of a

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[36] Indeed, neither party called our attention to any decision from a Court of Appeals in which a petitioner had satisfied any definition of actual innocence. Though some such decisions exist, see, *e. g.*, *Henderson* v. *Sargent*, 926 F. 2d 706, 713–714 (CA8), reaff'd in relevant part on rehearing, 939 F. 2d 586 (CA8 1991), cert. denied, 502 U. S. 1050 (1992); *Bliss* v. *Lockhart*,

century ago that "the one thing almost never suggested on collateral attack is that the prisoner was innocent of the crime" remains largely true today.[37] Explicitly tying the miscarriage of justice exception to innocence thus accommodates both the systemic interests in finality, comity, and conservation of judicial resources, and the overriding individual interest in doing justice in the "extraordinary case," *Carrier*, 477 U. S., at 496.

In addition to linking miscarriages of justice to innocence, *Carrier* and *Kuhlmann* also expressed the standard of proof that should govern consideration of those claims. In *Carrier*, for example, the Court stated that the petitioner must show that the constitutional error "probably" resulted in the conviction of one who was actually innocent. The *Kuhlmann* plurality, though using the term "colorable claim of factual innocence," elaborated that the petitioner would be required to establish, by a "'fair probability,'" that "'the trier of the facts would have entertained a reasonable doubt of his guilt.'" 477 U. S., at 454, 455, n. 17.

In the years following *Kuhlmann* and *Carrier*, we did not expound further on the actual innocence exception. In those few cases that mentioned the standard, the Court continued to rely on the formulations set forth in *Kuhlmann* and *Carrier*. In *McCleskey*, for example, while establishing that cause and prejudice would generally define the situations in which a federal court might entertain an abusive petition, the Court recognized an exception for cases in which the constitutional violation "probably has caused the conviction of one innocent of the crime." 499 U. S., at 494, citing *Carrier*, 477 U. S., at 485.

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891 F. 2d 1335, 1342 (CA8 1987) (relying on *Carrier*'s actual innocence exception as an alternative ground of decision), independent research confirms that such decisions are rare.

[37] Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 145 (1970).

Then, in *Sawyer*, the Court examined the miscarriage of justice exception as applied to a petitioner who claimed he was "actually innocent of the death penalty." In that opinion, the Court struggled to define "actual innocence" in the context of a petitioner's claim that his death sentence was inappropriate. The Court concluded that such actual innocence "must focus on those elements which render a defendant eligible for the death penalty." 505 U. S., at 347. However, in addition to defining what it means to be "innocent" of the death penalty, the Court departed from *Carrier*'s use of "probably" and adopted a more exacting standard of proof to govern these claims: The Court held that a habeas petitioner "must show by *clear and convincing* evidence that but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty." 505 U. S., at 336 (emphasis added).[38] No attempt was made in *Sawyer* to reconcile this stricter standard with *Carrier*'s use of "probably."

V

In evaluating Schlup's claim of innocence, the Court of Appeals applied Eighth Circuit precedent holding that *Sawyer*, rather than *Carrier*, supplied the proper legal standard. The court then purported to apply the *Sawyer* standard. Schlup argues that *Sawyer* has no application to a petitioner who claims that he is actually innocent of the crime, and that the Court of Appeals misapplied *Sawyer* in any event. Respondent contends that the Court of Appeals was correct in both its selection and its application of the *Sawyer* standard. Though the Court of Appeals seems to have misapplied *Sawyer*,[39] we do not rest our decision on that ground because we

[38] Even the high standard of proof set forth in *Sawyer* falls short of the *Jackson* standard governing habeas review of claims of insufficiency of the evidence. See *Jackson* v. *Virginia*, 443 U. S. 307, 324 (1979) ("[N]o rational trier of fact *could* have found proof of guilt beyond a reasonable doubt") (emphasis added). See *infra*, at 330.

[39] See *infra*, at 331.

conclude that in a case such as this, the *Sawyer* standard does not apply.

As we have stated, the fundamental miscarriage of justice exception seeks to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case. We conclude that *Carrier*, rather than *Sawyer*, properly strikes that balance when the claimed injustice is that constitutional error has resulted in the conviction of one who is actually innocent of the crime.

Claims of actual innocence pose less of a threat to scarce judicial resources and to principles of finality and comity than do claims that focus solely on the erroneous imposition of the death penalty. Though challenges to the propriety of imposing a sentence of death are routinely asserted in capital cases, experience has taught us that a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare. See *supra*, at 321–322. To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful. Even under the pre-*Sawyer* regime, "in virtually every case, the allegation of actual innocence has been summarily rejected."[40] The threat to judicial resources, finality, and comity posed by claims of actual innocence is thus significantly less than that posed by claims relating only to sentencing.

Of greater importance, the individual interest in avoiding injustice is most compelling in the context of actual innocence. The quintessential miscarriage of justice is the exe-

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[40] Steiker, Innocence and Federal Habeas, 41 UCLA L. Rev. 303, 377 (1993); see also *id.*, at 377, n. 370 (collecting cases).

cution of a person who is entirely innocent.[41] Indeed, concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected, for example, in the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship*, 397 U. S. 358, 372 (1970) (Harlan, J., concurring). See also T. Starkie, Evidence 756 (1824) ("The maxim of the law is . . . that it is better that ninety-nine . . . offenders should escape, than that one innocent man should be condemned"). See generally Newman, Beyond "Reasonable Doubt," 68 N. Y. U. L. Rev. 979, 980–981 (1993).

The overriding importance of this greater individual interest merits protection by imposing a somewhat less exacting standard of proof on a habeas petitioner alleging a fundamental miscarriage of justice than on one alleging that his sentence is too severe. As this Court has noted, "a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *In re Winship*, 397 U. S., at 370 (Harlan, J., concurring); see also *Addington* v. *Texas*, 441 U. S. 418, 423 (1979). The standard of proof thus reflects "the relative importance attached to the ultimate decision." *Ibid.* Though the *Sawyer* standard was fashioned to reflect the relative importance of a claim of an erroneous sentence, application of that standard to petitioners such as Schlup would give insufficient weight to the correspondingly greater injustice that is implicated by a claim of actual innocence. The

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[41] See, *e. g.*, *Lankford* v. *Idaho*, 500 U. S. 110, 125 (1991); *Clemons* v. *Mississippi*, 494 U. S. 738, 750, n. 4 (1990); *Booth* v. *Maryland*, 482 U. S. 496, 509, n. 12 (1987); *Solem* v. *Helm*, 463 U. S. 277, 294 (1983); *Gardner* v. *Florida*, 430 U. S. 349, 357–358 (1977) (plurality opinion); *Woodson* v. *North Carolina*, 428 U. S. 280, 303–304, 305 (1976) (plurality opinion of Stewart, Powell, and STEVENS, JJ.).

paramount importance of avoiding the injustice of executing one who is actually innocent thus requires application of the *Carrier* standard.[42]

We recognize, as the State has reminded us, that in *Sawyer* the Court applied its new standard not only to the penalty phase of the case but also to Sawyer's responsibility for arson, one of the elements of the offense of first-degree murder.[43] This fact does not require application of the *Sawyer* standard to a case such as Schlup's. Though formulated as an element of the offense of first-degree murder, the arson functioned essentially as a sentence enhancer. That claim, therefore, is readily distinguishable from a claim, like the one raised by Schlup, that the petitioner is actually innocent. Fealty to the doctrine of *stare decisis* does not, therefore, preclude application of the *Carrier* standard to the facts of this case.[44]

Accordingly, we hold that the *Carrier* "probably resulted" standard rather than the more stringent *Sawyer* standard must govern the miscarriage of justice inquiry when a peti-

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[42] By our references to *Winship,* of course, we do not suggest that Schlup comes before a habeas court in the same situation as one who has merely been accused of a crime. Having been convicted by a jury of a capital offense, Schlup no longer has the benefit of the presumption of innocence. Cf. *Herrera* v. *Collins,* 506 U. S., at 399 (O'Connor, J., concurring). To the contrary, Schlup comes before the habeas court with a strong—and in the vast majority of the cases conclusive—presumption of guilt. Our reference to *Winship* is intended merely to demonstrate that it is quite consistent with our jurisprudence to give content through a burden of proof to the understanding that fundamental injustice would result from the erroneous conviction and execution of an innocent person.

[43] See *Sawyer,* 505 U. S., at 342, n. 8, 349–350.

[44] Nor do we believe that confining *Sawyer*'s more rigorous standard to claims involving eligibility for the sentence of death is anomalous. Our recognition of the significant difference between the injustice that results from an erroneous conviction and the injustice that results from an erroneous sentence is reflected in our decisions that permit reduced procedural protections at sentencing. See, *e. g., Williams* v. *New York,* 337 U. S. 241 (1949).

tioner who has been sentenced to death raises a claim of actual innocence to avoid a procedural bar to the consideration of the merits of his constitutional claims.

VI

The *Carrier* standard requires the habeas petitioner to show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." 477 U. S., at 496. To establish the requisite probability, the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence. The petitioner thus is required to make a stronger showing than that needed to establish prejudice.[45] At the same time, the showing of "more likely than not" imposes a lower burden of proof than the "clear and convincing" standard required under *Sawyer*. The *Carrier* standard thus ensures that petitioner's case is truly "extraordinary," *McCleskey*, 499 U. S., at 494, while still providing petitioner a meaningful avenue by which to avoid a manifest injustice.

Carrier requires a petitioner to show that he is "actually innocent." As used in *Carrier*, actual innocence is closely related to the definition set forth by this Court in *Sawyer*. To satisfy the *Carrier* gateway standard, a petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.

Several observations about this standard are in order. The *Carrier* standard is intended to focus the inquiry on actual innocence. In assessing the adequacy of petitioner's showing, therefore, the district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on "actual innocence" allows the reviewing tribunal also to consider the probative force of relevant evi-

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[45] See *Strickland* v. *Washington*, 466 U. S. 668, 694 (1984); *United States* v. *Bagley*, 473 U. S. 667, 682 (1985) (Blackmun, J.); *id.*, at 685 (White, J., concurring).

dence that was either excluded or unavailable at trial. Indeed, with respect to this aspect of the *Carrier* standard, we believe that Judge Friendly's description of the inquiry is appropriate: The habeas court must make its determination concerning the petitioner's innocence "in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial."[46]

The consideration in federal habeas proceedings of a broader array of evidence does not modify the essential meaning of "innocence." The *Carrier* standard reflects the proposition, firmly established in our legal system, that the line between innocence and guilt is drawn with reference to a reasonable doubt. See *In re Winship*, 397 U. S. 358 (1970). Indeed, even in *Sawyer*, with its emphasis on eligibility for the death penalty, the Court did not stray from the understanding that the eligibility determination must be made with reference to reasonable doubt. Thus, whether a court is assessing eligibility for the death penalty under *Sawyer*, or is deciding whether a petitioner has made the requisite showing of innocence under *Carrier*, the analysis must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between guilt and innocence.[47]

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[46] 38 U. Chi. L. Rev., at 160.

[47] Actual innocence, of course, does not require innocence in the broad sense of having led an entirely blameless life. Indeed, Schlup's situation provides a good illustration. At the time of the crime at issue in this case, Schlup was incarcerated for an earlier offense, the sordid details of which he acknowledged in his testimony at the punishment phase of his trial. Such earlier criminal activity has no bearing on whether Schlup is actually innocent of Dade's murder.

As we have explained, *supra*, at 313–317, Schlup's claim of innocence is fundamentally different from the claim advanced in *Herrera*. The standard that we apply today, therefore, will not foreclose the application of factual innocence to the analysis of such claims.

The meaning of actual innocence as formulated by *Sawyer* and *Carrier* does not merely require a showing that a reasonable doubt exists in the light of the new evidence, but rather that no reasonable juror would have found the defendant guilty. It is not the district court's independent judgment as to whether reasonable doubt exists that the standard addresses; rather the standard requires the district court to make a probabilistic determination about what reasonable, properly instructed jurors would do. Thus, a petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.

We note finally that the *Carrier* standard requires a petitioner to show that it is more likely than not that "no reasonable juror" would have convicted him. The word "reasonable" in that formulation is not without meaning. It must be presumed that a reasonable juror would consider fairly all of the evidence presented. It must also be presumed that such a juror would conscientiously obey the instructions of the trial court requiring proof beyond a reasonable doubt.[48]

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[48] THE CHIEF JUSTICE suggests that the *Carrier* standard is "a classic mixing of apples and oranges." *Post*, at 339. That standard, however, is no more a mixing of apples and oranges than is the standard adopted by the Court in *Sawyer*. See *Sawyer*, 505 U. S., at 336 (requiring that petitioner show "by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty"). Though it is true that "'[m]ore likely than not'" is a "quintessential charge to a finder of fact," *post*, at 339, that is equally true of the "clear and convincing evidence" component of the *Sawyer* formulation. There is thus no reason to believe that the *Carrier* standard is any more likely than the *Sawyer* standard to be "a source of confusion." *Post*, at 339.

Nor do we accept THE CHIEF JUSTICE's description of the *Carrier* standard as a "hybrid." *Post*, at 339. Finders of fact are often called upon to make predictions about the likely actions of hypothetical "reasonable" actors. Thus, the application of "more likely than not" to the habeas court's assessment of the actions of reasonable jurors is neither illogical nor unusual.

Though the *Carrier* standard requires a substantial showing, it is by no means equivalent to the standard of *Jackson* v. *Virginia*, 443 U. S. 307 (1979), that governs review of claims of insufficient evidence. The *Jackson* standard, which focuses on whether any rational juror could have convicted, looks to whether there is sufficient evidence which, if credited, could support the conviction. The *Jackson* standard thus differs in at least two important ways from the *Carrier* standard. First, under *Jackson*, the assessment of the credibility of witnesses is generally beyond the scope of review. In contrast, under the gateway standard we describe today, the newly presented evidence may indeed call into question the credibility of the witnesses presented at trial. In such a case, the habeas court may have to make some credibility assessments. Second, and more fundamentally, the focus of the inquiry is different under *Jackson* than under *Carrier*. Under *Jackson*, the use of the word "could" focuses the inquiry on the power of the trier of fact to reach its conclusion. Under *Carrier*, the use of the word "would" focuses the inquiry on the likely behavior of the trier of fact.

Indeed, our adoption of the phrase "more likely than not" reflects this distinction. Under *Jackson*, the question whether the trier of fact has power to make a finding of guilt requires a binary response: Either the trier of fact has power as a matter of law or it does not. Under *Carrier*, in contrast, the habeas court must consider what reasonable triers of fact are likely to do. Under this probabilistic inquiry, it makes sense to have a probabilistic standard such as "more likely than not."[49] Thus, though under *Jackson* the mere existence of sufficient evidence to convict would be determinative of petitioner's claim, that is not true under *Carrier*.

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[49] The "clear and convincing" standard adopted in *Sawyer* reflects this same understanding of the relevant inquiry.

We believe that the Eighth Circuit's erroneous application of the *Sawyer* standard below illustrates this difference. In determining that Schlup had failed to satisfy the *Sawyer* standard, the majority noted that "two prison officials, who were eyewitnesses to the crime, positively identified Mr. Schlup as one of the three perpetrators of the murder. This evidence was clearly admissible and stands unrefuted except to the extent that Mr. Schlup now questions its credibility." 11 F. 3d, at 741.

The majority then continued:

> "[E]ven if we disregard the source of the new evidence, the eleventh-hour nature of the information, and a presentation coming almost six years after the trial; it is simply not possible to say that the appellant has shown by clear and convincing evidence that but for a constitutional error no reasonable jury would have found him guilty." *Ibid.*

However, Schlup's evidence includes the sworn statements of several eyewitnesses that Schlup was not involved in the crime. Moreover, Schlup has presented statements from Green and Faherty that cast doubt on whether Schlup could have participated in the murder and still arrived at the dining room 65 seconds before the distress call was received. Those new statements may, of course, be unreliable. But if they are true—as the Court of Appeals assumed for the purpose of applying its understanding of the *Sawyer* standard—it surely cannot be said that a juror, conscientiously following the judge's instructions requiring proof beyond a reasonable doubt, would vote to convict. Under a proper application of either *Sawyer* or *Carrier*, petitioner's showing of innocence is not insufficient solely because the trial record contained sufficient evidence to support the jury's verdict.

In this case, the application of the *Carrier* standard arises in the context of a request for an evidentiary hearing. In applying the *Carrier* standard to such a request, the District

Court must assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial. Obviously, the court is not required to test the new evidence by a standard appropriate for deciding a motion for summary judgment. Cf. *Agosto* v. *INS*, 436 U. S. 748, 756 (1978) ("[A] district court generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented"); *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 249 (1986) ("[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial"). Instead, the court may consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence.

Because both the Court of Appeals and the District Court evaluated the record under an improper standard, further proceedings are necessary. The fact-intensive nature of the inquiry, together with the District Court's ability to take testimony from the few key witnesses if it deems that course advisable, convinces us that the most expeditious procedure is to order that the decision of the Court of Appeals be vacated and that the case be remanded to the Court of Appeals with instructions to remand to the District Court for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, concurring.

I write to explain, in light of the dissenting opinions, what I understand the Court to decide and what it does not.

The Court holds that, in order to have an abusive or successive habeas claim heard on the merits, a petitioner who cannot demonstrate cause and prejudice "must show that it is more likely than not that no reasonable juror would have convicted him" in light of newly discovered evidence of innocence. *Ante*, at 327. This standard is

higher than that required for prejudice, which requires only "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt," *Strickland* v. *Washington*, 466 U. S. 668, 695 (1984). Instead, a petitioner does not pass through the gateway erected by *Murray* v. *Carrier*, 477 U. S. 478 (1986), if the district court believes it more likely than not that there is any juror who, acting reasonably, would have found the petitioner guilty beyond a reasonable doubt. And the Court's standard, which focuses the inquiry on the likely behavior of jurors, is substantively different from the rationality standard of *Jackson* v. *Virginia*, 443 U. S. 307 (1979). *Jackson*, which emphasizes the authority of the factfinder to make conclusions from the evidence, establishes a standard of review for the sufficiency of record evidence—a standard that would be ill suited as a burden of proof, see *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 624–626 (1993). The Court today does not sow confusion in the law. Rather, it properly balances the dictates of justice with the need to ensure that the actual innocence exception remains only a "'safety valve' for the 'extraordinary case,'" *Harris* v. *Reed*, 489 U. S. 255, 271 (1989) (O'Connor, J., concurring).

Moreover, the Court does not, and need not, decide whether the fundamental miscarriage of justice exception is a discretionary remedy. It is a paradigmatic abuse of discretion for a court to base its judgment on an erroneous view of the law. See *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 405 (1990). Having decided that the district court committed legal error, and thus abused its discretion, by relying on *Sawyer* v. *Whitley*, 505 U. S. 333 (1992), instead of *Murray* v. *Carrier*, *supra*, the Court need not decide the question—neither argued by the parties nor passed upon by the Court of Appeals—whether abuse of discretion is the proper standard of review. In reversing the judgment of the Court

of Appeals, therefore, the Court does not disturb the traditional discretion of district courts in this area, nor does it speak to the standard of appellate review for such judgments.

With these observations, I join the Court's opinion.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE KENNEDY and JUSTICE THOMAS join, dissenting.

The Court decides that the threshold standard for a showing of "actual innocence" in a successive or abusive habeas petition is that set forth in *Murray* v. *Carrier*, 477 U. S. 478 (1986), rather than that set forth in *Sawyer* v. *Whitley*, 505 U. S. 333 (1992). For reasons which I later set out, I believe the *Sawyer* standard should be applied to claims of guilt or innocence as well as to challenges to a petitioner's sentence. But, more importantly, I believe the Court's exegesis of the *Carrier* standard both waters down the standard suggested in that case, and will inevitably create confusion in the lower courts.

On February 3, 1984, three white inmates attacked and killed a black inmate named Arthur Dade. At trial, testimony by Sergeant Roger Flowers and Officer John Maylee indicated that inmate Rodnie Stewart threw a container of steaming liquid into Dade's face, petitioner jumped on Dade's back rendering him defenseless, and inmate Robert O'Neal proceeded to stab Dade to death. Petitioner's trial counsel attempted to discredit both eyewitness identifications. As to Sergeant Flowers, counsel argued that Flowers had brought a visitor into petitioner's cell less than an hour before the stabbing, and, therefore, Flowers had Schlup "on the brain." Trial Tr. 493–494. Trial counsel attempted to discredit Officer Maylee's identification by arguing that Maylee was too far from the scene to properly view the incident. Through discovery, petitioner's trial counsel uncovered a videotape in which petitioner is the first inmate to enter the cafeteria. One minute and five seconds after petitioner

enters the cafeteria, a group of guards run out in apparent response to a distress call. Twenty-six seconds later, O'Neal is seen entering the cafeteria. Petitioner's trial counsel argued that the videotape established that petitioner could not have committed the murder because there was insufficient time for him to commit the crime and arrive at the cafeteria one minute and five seconds prior to the distress call. Petitioner's trial counsel also presented two alibi witnesses who testified that petitioner had walked in front of them to the cafeteria without incident.

The jury considered this conflicting evidence, determined that petitioner's story was not credible, and convicted him of capital murder. During the sentencing component of trial, the prosecution presented evidence that there were two statutory aggravating factors that warranted imposition of the death penalty: petitioner committed the murder in a place of lawful confinement, and petitioner had a substantial history of serious assaultive criminal convictions. As to the second aggravating factor, the prosecution presented testimony that for two weeks, petitioner had brutally beaten, tortured, and sodomized a cellmate in a county jail. The prosecution also presented testimony that petitioner was convicted of aggravated assault for slitting a cellmate's throat. On cross-examination, petitioner presented his version of the prior incidents. The jury considered this evidence, rejected petitioner's story, and returned a sentence of death.

On appeal, the Missouri Supreme Court affirmed petitioner's conviction and death sentence. Petitioner then filed state collateral proceedings claiming, among other things, that his trial counsel was ineffective for failing to present additional alibi witnesses and for failing to investigate fully the circumstances of the murder. The Missouri Circuit Court determined that petitioner's counsel provided effective assistance of counsel. The Missouri Supreme Court affirmed the denial of postconviction relief.

Petitioner then filed his first federal habeas petition claiming that his trial counsel was ineffective at both the guilt and penalty phases of trial. Though he previously refused to identify Randy Jordan as the alleged third participant in the murder, petitioner faulted his trial counsel for failing to call Randy Jordan as a witness.[1] The District Court denied relief. A panel of the Court of Appeals for the Eighth Circuit concluded on the merits that petitioner's trial counsel had not been ineffective at the guilt or penalty phases of trial.[2] Petitioner sought review of the panel's decision by the en banc court. No Eighth Circuit judge questioned the panel's conclusion that petitioner's trial counsel provided effective assistance of counsel during the guilt phase of trial.

Petitioner filed a second federal habeas petition, again claiming that his trial counsel was ineffective at both the guilt and penalty phases of trial. Petitioner supplemented this filing with an affidavit from a former inmate, John Green. Green's affidavit related to the timing of the distress call. In his most recent statement, Green swore that Sergeant Flowers "was on his way to break up the fight when he told me to call base. I immediately went into the office, picked up the phone, and called base." App. 122.[3] Under

[1] The Missouri Circuit Court found that "[d]efense counsel did not interview Randy Jordan, whom Petitioner now alleges was the third participant in the murder with which the Petitioner was charged, because the Petitioner while maintaining someone else committed the acts attributed to him, refused to give the name of that person to his counsel." *Schlup* v. *Delo,* Respondent's Exhibit J, pp. 49–50.

[2] Senior Circuit Judge Heaney took issue only with the majority's conclusion that petitioner's trial counsel had rendered effective assistance at the penalty phase of trial. Cf. *Schlup* v. *Armontrout,* 941 F. 2d 631, 642 (1991) ("I disagree with the court's conclusion that Schlup was not prejudiced by his counsel's ineffectiveness during the penalty phase") (dissenting opinion).

[3] On the day of the incident Green told prison investigators that he had not observed the murder. At Stewart's trial, while under oath, Green testified that he saw no actual fight take place and made no mention of his call to base. App. 140. Green now also swears that he "called base . . . within seconds of Dade hitting the ground." *Id.,* at 123.

this timing sequence, petitioner submitted that he "ha[d] produced proof, which could not have been fabricated, that the call to which the guards [in the cafeteria] responded came seconds after the stabbing." *Id.*, at 100–101. Further, petitioner claimed that "Green's testimony thus makes it impossible, under any view of the evidence, for Schlup to have participated in Dade's murder: for thirty seconds to a minute before the distress call, the videotape plainly shows Lloyd Schlup in the prison dining room, quietly getting his lunch." Brief for Petitioner 12. Thus, petitioner's claim of "actual innocence" depends, in part, on the assumption that the officers in the cafeteria responded to Green's distress call "within seconds" of Dade hitting the ground.[4]

The District Court denied petitioner's second habeas petition without conducting an evidentiary hearing. While on appeal, petitioner supplemented his habeas petition with an additional affidavit from Robert Faherty, a former prison guard who previously testified at petitioner's trial. A divided panel of the Eighth Circuit applied the *Sawyer* standard to petitioner's gateway claim of "actual innocence" and determined that petitioner failed to meet that standard. The Eighth Circuit denied rehearing en banc. We granted certiorari to determine when, absent a showing of cause

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[4] One problem with this theory is that O'Neal, an undisputed participant in the murder, entered the cafeteria 26 seconds after the guards responded to the distress call. As respondent explained at oral argument: "[I]f you believe that [Green] radioed in immediately upon the time of the body falling . . . then you look at the videotape, and there is only 26 seconds between the time that that call was supposedly made by Green and the time that O'Neal comes into the cafeteria downstairs, and all of the evidence in this case shows it's impossible for O'Neal, the admitted murderer . . . to have run down, . . . broken a window, thrown the knife out the window, come back, washed his hands . . . and go[ne] down to the cafeteria, *if you hold Green's present statement as controlling, the murder never occurred.*" Tr. of Oral Arg. 30–31 (emphasis added). Thus, as the Court acknowledges, *ante*, at 308, n. 17, there was a delay between the time of the murder and the time that the guards in the cafeteria responded to the distress call.

and prejudice, a district court may consider the merits of an abusive or successive habeas petition. 511 U. S. 1003 (1994).

In *Kuhlmann* v. *Wilson*, 477 U. S. 436 (1986), the Court examined when a federal court could entertain a successive habeas petition. A plurality of the Court determined that the "'ends of justice'" required a district court to entertain the merits of an otherwise defaulted petition where the prisoner supplemented his constitutional claim with a showing of factual innocence. *Id.*, at 454. After citing Judge Friendly's definition of factual innocence, the plurality summarily determined that the District Court should not have entertained Wilson's petition because the evidence of guilt in his case had been "'nearly overwhelming.'" *Id.*, at 455.

In *Carrier*, the Court determined that a federal court could not review a procedurally defaulted habeas petition unless the petitioner demonstrated both cause for the default as well as prejudice resulting from the constitutional error. 477 U. S., at 492.[5] The *Carrier* Court, however, left open the possibility that in a truly extraordinary case, a federal habeas court might excuse a failure to establish cause and prejudice where "'a constitutional violation has probably resulted in the conviction of one who is *actually innocent.*'" *Ante*, at 327, quoting 477 U. S., at 496 (emphasis added).

In *Sawyer*, we described in some detail the showing of actual innocence required when a habeas petitioner brings an otherwise abusive, successive, or procedurally defaulted claim challenging the imposition of his death sentence, rather than his guilt of the crime. 505 U. S., at 339–347. There the Court emphasized that innocence of the death penalty,

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[5] The Court explicitly rejected the contention that "cause need not be shown if actual prejudice is shown," even where the constitutional claims "call[ed] into question the reliability of an adjudication of *legal guilt.*" 477 U. S., at 495 (emphasis added); see also *Engle* v. *Isaac*, 456 U. S. 107, 129 (1982).

like its "'actual innocence'" counterpart, is "a very narrow exception," and that in order to be "workable it must be subject to determination by relatively objective standards." *Id.*, at 341. Thus, we concluded that a habeas petitioner who challenged his sentence in an otherwise defaulted petition must show "by clear and convincing evidence that but for constitutional error, no reasonable juror would [have found the petitioner] eligible for the death penalty." *Id.*, at 348.

We have never until today had to similarly flesh out the standard of "actual innocence" in the context of a habeas petitioner claiming innocence of the crime. Thus, I agree that the question of what threshold standard should govern is an open one. As I have said earlier, I disagree with the Court's conclusion that *Carrier*, and not *Sawyer*, provides the proper standard. But far more troubling than the choice of *Carrier* over *Sawyer* is the watered down and confusing version of *Carrier* which is served up by the Court.

As the Court notes, to satisfy *Carrier* a habeas petitioner must demonstrate that "'a constitutional violation has probably resulted in the conviction of one who is actually innocent.'" *Ante*, at 327 (quoting *Carrier*, *supra*, at 496). The Court informs us that a showing of "actual innocence" requires a habeas petitioner to "show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Ante*, at 327. But this is a classic mixing of apples and oranges. "More likely than not" is a quintessential charge to a finder of fact, while "no reasonable juror would have convicted him in the light of the new evidence" is an equally quintessential conclusion of law similar to the standard that courts constantly employ in deciding motions for judgment of acquittal in criminal cases. The hybrid which the Court serves up is bound to be a source of confusion. Because new evidence not presented at trial will almost always be involved in these claims of actual innocence, the legal standard for judgment of acquittal cannot

be bodily transposed for the determination of "actual innocence," but the sensible course would be to modify that familiar standard, see *infra*, at 341–342, rather than to create a confusing hybrid.

In the course of elaborating the *Carrier* standard, the Court takes pains to point out that it differs from the standard enunciated in *Jackson* v. *Virginia*, 443 U. S. 307 (1979), for review of the sufficiency of the evidence to meet the constitutional standard of proof beyond a reasonable doubt. Under *Jackson*, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*, at 319. This standard requires a solely retrospective analysis of the evidence considered by the jury and reflects a healthy respect for the trier of fact's "responsibility . . . to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Ibid.*

The Court fails to acknowledge expressly the similarities between the standard it has adopted and the *Jackson* standard. A habeas court reviewing a claim of actual innocence does not write on a clean slate. Cf. *Barefoot* v. *Estelle*, 463 U. S. 880, 887 (1983) ("Federal courts are not forums in which to relitigate state trials"); *Herrera* v. *Collins*, 506 U. S. 390, 416 (1993) ("[I]n state criminal proceedings the trial is the paramount event for determining the guilt or innocence of the defendant"); *Wainwright* v. *Sykes*, 433 U. S. 72, 90 (1977) ("Society's resources have been concentrated at [the state trial] in order to decide, within the limits of human fallibility, the question of guilt or innocence of one of its citizens"). Therefore, as the Court acknowledges, a petitioner making a claim of actual innocence under *Carrier* falls short of satisfying his burden if the reviewing court determines that *any* juror reasonably would have found petitioner guilty of the crime. See *ante*, at 329; cf. *Jackson*, *supra*, at 318–319.

The situation presented by a claim of actual innocence in a federal habeas petition is obviously different from that presented in *Jackson* because the habeas court analyzing an "actual innocence" claim is faced with a body of evidence that has been supplemented since the original trial. The reviewing court must somehow predict the effect that this new evidence would have had on the deliberations of reasonable jurors. It must necessarily weigh this new evidence in some manner, and may need to make credibility determinations as to witnesses who did not appear before the original jury. This new evidence, however, is not a license for the reviewing court to disregard the presumptively proper determination by the original trier of fact.

I think the standard enunciated in *Jackson*, properly modified because of the different body of evidence that must be considered, faithfully reflects the language used in *Carrier.* The habeas judge should initially consider the motion on the basis of the written submissions made by the parties. As the Court suggests, habeas courts will be able to resolve the great majority of "actual innocence" claims routinely without any evidentiary hearing. See *ante,* at 324. This fact is important because, as we noted in *Sawyer:* "In the every day context of capital penalty proceedings, a federal district judge typically will be presented with a successive or abusive habeas petition a few days before, or even on the day of, a scheduled execution, and will have only a limited time to determine whether a petitioner has shown that his case falls within the 'actual innocence' exception if such a claim is made." 505 U. S., at 341 (footnote omitted).

But in the highly unusual case where the district court believes on the basis of written submissions that the necessary showing of "actual innocence" may be made out, it should conduct a limited evidentiary hearing at which the affiants whose testimony the court believes to be crucial to the showing of actual innocence are present and may be cross-examined as to veracity, reliability, and all of the other

elements that affect the weight to be given the testimony of a witness. After such a hearing, the district court would be in as good a position as possible to make the required determination as to the showing of actual innocence.

The present state of our habeas jurisprudence is less than ideal in its complexity, but today's decision needlessly adds to that complexity. I believe that by adopting the *Sawyer* standard both for attacks on the sentence and on the judgment of conviction, we would take a step in the direction of simplifying this jurisprudence. See *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1, 10 (1992) (noting the importance of uniformity in the law of habeas corpus). The *Sawyer* standard strikes the proper balance among the State's interest in finality, *McCleskey* v. *Zant*, 499 U. S. 467, 491–492 (1991), the federal courts' respect for principles of federalism, see, *e. g.*, *Teague* v. *Lane*, 489 U. S. 288, 309 (1989) (plurality opinion), and "the ultimate equity on the prisoner's side—a sufficient showing of actual innocence," *Withrow* v. *Williams*, 507 U. S. 680, 700 (1993) (O'CONNOR, J., concurring in part and dissenting in part). The Court of Appeals fully analyzed petitioner's new evidence and determined that petitioner fell way short of "'showing by clear and convincing evidence [that] no reasonable juror would find him [guilty of murder].'" 11 F. 3d 738, 743 (CA8 1993) (quoting *Sawyer*, *supra*, at 348). I agree and therefore would affirm.

But if we are to adopt the *Carrier* standard, it should not be the confusing exegesis of that standard contained in the Court's opinion. It should be based on a modified version of *Jackson* v. *Virginia*, with a clearly defined area in which the district court may exercise its discretion to hold an evidentiary hearing.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

A federal statute entitled "Finality of Determination"—to be found at § 2244 of Title 28 of the United States Code—

specifically addresses the problem of second and subsequent petitions for the writ of habeas corpus. The reader of today's opinion will be unencumbered with knowledge of this law, since it is not there discussed or quoted, and indeed is only cited *en passant.* See *ante,* at 318, 320. Rather than asking what the statute says, or even what we have said the statute says, the Court asks only what is the fairest standard to apply, and answers that question by looking to the various semiconsistent standards articulated in our most recent decisions—minutely parsing phrases, and seeking shades of meaning in the interstices of sentences and words, as though a discursive judicial opinion were a statute. I would proceed differently. Within the very broad limits set by the Suspension Clause, U. S. Const., Art. I, § 9, cl. 2, the federal writ of habeas corpus is governed by statute. Section 2244 controls this case; the disposition it announces is plain enough, and our decisions contain nothing that would justify departure from that plain meaning.

Section 2244(b) provides:

> "When after an evidentiary hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States or a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States or a justice or judge of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice, or judge is satisfied that the applicant has not on the earlier application deliberately withheld the newly asserted ground or otherwise abused the writ."

A long sentence, but not a difficult one. A federal district court that receives a second or subsequent petition for the writ of habeas corpus, when a prior petition has been denied on the merits, "need not . . . entertai[n]" (*i. e.*, may dismiss) the petition unless it is neither (to use our shorthand terminology) successive nor abusive. See also Habeas Corpus Rule 9(b) ("A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief . . ."). Today, however, the Court obliquely but unmistakably pronounces that a successive or abusive petition *must* be entertained and may *not* be dismissed so long as the petitioner makes a sufficiently persuasive showing that a "fundamental miscarriage of justice" has occurred. *Ante*, at 316 ("[I]f a petitioner such as Schlup presents [adequate] evidence of innocence . . . the petitioner should be allowed to pass through the gateway and argue the merits"); *ante*, at 319–321.[1] That conclusion flatly contradicts the statute, and is not required by our precedent.

Our earliest cases, from an era before Congress legislated rules to govern the finality of habeas adjudication, held that successive or abusive petitions were "to be disposed of in the exercise of a sound judicial discretion guided and controlled by a consideration of whatever has a rational bearing on the propriety of the discharge sought," and that when weighing those considerations the district court could give "controlling weight" to "a prior refusal to discharge on a like application." *Salinger* v. *Loisel*, 265 U. S. 224, 231 (1924) (successive peti-

[1] The claim that "the Court does not, and need not, decide whether the fundamental miscarriage of justice exception is a discretionary remedy," *ante*, at 333 (O'CONNOR, J., concurring), is not in my view an accurate description of what the Court's opinion says. Of course the concurrence's merely making the claim causes it to be an accurate description of what the Court today *holds*, since the narrower ground taken by one of the Justices comprising a five-Justice majority becomes the law. *Marks* v. *United States*, 430 U. S. 188, 193 (1977).

tion); see also *Wong Doo* v. *United States*, 265 U. S. 239, 240–241 (1924) (abusive petition). In *Salinger* the Court particularly noted: "Here the prior refusal to discharge [the prisoner] was by a court of coordinate jurisdiction and was affirmed in a considered opinion by a Circuit Court of Appeals. Had the District Court disposed of the later applications on that ground, its discretion would have been well exercised and we should sustain its action without saying more." 265 U. S., at 232. Section 2244 is no more and no less than a codification of this approach. It is one of the disheartening ironies of today's decision that the Court not merely disregards a statute, but in doing so denies district judges the very discretion that the Court itself freely entrusted to them before Congress spoke.

In 1948 Congress for the first time addressed the problem of repetitive petitions by enacting the predecessor of the current § 2244, which provided as follows:

> "No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States, or of any State, if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus and the petition presents no new ground not theretofore presented and determined, *and the judge or court is satisfied that the ends of justice will not be served by such inquiry.*" 28 U. S. C. § 2244 (1964 ed.) (emphasis added).

This provision was construed in *Sanders* v. *United States*, 373 U. S. 1 (1963), and (with unimpeachable logic) was held to mean that "[c]ontrolling weight may be given to denial of a prior application for federal habeas corpus [under 28 U. S. C. § 2254] only if (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on

the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application." *Id.*, at 15. Thus, there appeared for the first time in our decisions the notion that a habeas court has "*the duty*" to reach the merits of a subsequent petition "if the ends of justice demand," *id.*, at 18–19—and it appeared for the perfectly good reason that the statute, as then written, imposed such a duty. And even as to that duty the *Sanders* Court added a "final qualification" that the Court today would do well to remember:

> "The principles governing . . . denial of a hearing on a successive application are addressed to the sound discretion of the federal trial judges. Theirs is the major responsibility for the just and sound administration of the federal collateral remedies, and theirs must be the judgment as to whether a second or successive application shall be denied without consideration of the merits." *Id.*, at 18.

Three years after *Sanders*, however, Congress amended § 2244 to establish different finality rules for federal prisoner petitions (filed under § 2255) and state prisoner petitions (filed under § 2254). Section 2244(a), which addresses petitions by federal prisoners, retains the "ends of justice" proviso from the old statute; but § 2244(b) omits it, thus restricting the district courts' *obligation* to entertain petitions by state prisoners to cases where the petition is neither successive nor abusive. One might have expected that this not-so-subtle change in the statute would change our interpretation of it, and that we would modify *Sanders* by holding that a district court could exercise its discretion to give controlling weight to the prior denial—which was of course precisely what *Salinger* envisioned.

Yet when the new version of § 2244(b) was first construed, in *Kuhlmann* v. *Wilson*, 477 U. S. 436 (1986), a plurality of the Court announced that it would "continue to rely on the

reference in *Sanders* to the 'ends of justice,'" 477 U. S., at 451, and concluded that "the 'ends of justice' require federal courts to entertain [successive] petitions only where the prisoner supplements his constitutional claim with a colorable showing of factual innocence." *Id.*, at 454. That conclusion contains two complementary propositions. The first is that a habeas court may *not* reach the merits of a barred claim *unless* actual innocence is shown; this was the actual judgment of the opinion (one cannot say the holding, since the opinion was a mere plurality). See *id.*, at 455 (stating that the District Court and Court of Appeals should have dismissed the successive petition because the petitioner's claim of innocence was meritless). The second is that a habeas court *must* hear a claim of actual innocence and reach the merits of the petition if the claim is sufficiently persuasive; this was the purest dictum. It is the Court's prerogative to adopt that dictum today, but to adopt it without analysis, as though it were binding precedent, will not do. The *Kuhlmann* plurality opinion lacks formal status as authority, and, as discussed below, no holding of this Court binds us to it. A decision to follow it must be justified by reason, not simply asserted by will.

And if reasons are to be given, justification of the *Kuhlmann* opinion will be found difficult indeed. The plurality's central theory is that "the permissive language of § 2244(b) gives federal courts discretion to entertain successive petitions under some circumstances," so that "[u]nless [the] 'rare instances' [in which successive petitions will be entertained] are to be identified by whim or caprice, district judges must be given guidance for determining when to exercise the limited discretion granted them by § 2244(b)." See 477 U. S., at 451. What the plurality then proceeds to do, however, is not to "guide" the discretion, but to eliminate it entirely, dividing the entire universe of successive and abusive petitions into those that *must not* be entertained (where there is no showing of innocence) and those that *must* be entertained (where

there is such a showing). This converts a statute redolent of permissiveness ("*need not* entertain") into a rigid command.[2]

The *Kuhlmann* plurality's concern about caprice is met—as it is met for all decisions committed by law to the discretion of lower courts—by applying traditional "abuse-of-discretion" standards. A judge who dismisses a successive petition because he misconceives some question of law, because he detests the petitioner's religion, or because he would rather play golf, may be reversed. A judge who dismisses a successive petition because it is the petitioner's twenty-second, rather than his second, because its "only purpose is to vex, harass, or delay," *Sanders*, *supra*, at 18, or because the constitutional claims can be seen to be frivolous on the face of the papers—for any of the numerous considerations that have "a *rational* bearing on the propriety of the discharge sought," *Salinger*, 265 U. S., at 231 (emphasis added)—may not be commanded to reach the merits because "the ends of justice" require. Here as elsewhere in the law, to say that a district judge may not abuse his discretion is merely to say that the action in question (dismissing a successive petition) may not be done without considering relevant factors and giving a "justifying reason," *Foman* v. *Davis*, 371 U. S. 178, 182 (1962). See also *American Dredging Co.* v. *Miller*, 510 U. S. 443, 455 (1994). It is a failure of logic, and an arrogation of authority, to "guide" that discretion by holding that what Congress authorized the district court to do may not be done at all.

The Court's assumption that the requirement imposed by the *Kuhlmann* plurality should be taken as law can find no support in our subsequent decisions. To be sure, some cases restate the supposed duty in the course of historical surveys of the area. See, *e. g.*, *McCleskey* v. *Zant*, 499 U. S.

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[2] The present case does not, of course, present the question whether the *Kuhlmann* plurality was wrong to identify a category of petitions that *must not* be entertained—a disposition that is at least compatible with the text of § 2244(b).

467, 495 (1991) ("*Kuhlmann* . . . required federal courts to entertain successive petitions when a petitioner supplements a constitutional claim with a 'colorable showing of factual innocence' "). But if we are to lavish upon the verbiage of our opinions the detailed attention more appropriately reserved for the statute itself, more of the cases (and some of the *same* cases) have described the miscarriage-of-justice doctrine as a rule of permission rather than a rule of obligation. See, *e. g.*, *Sawyer* v. *Whitley*, 505 U. S. 333, 339 (1992) ("[*Kuhlmann* held that] the miscarriage of justice exception would *allow* successive claims to be heard"); *McCleskey*, 499 U. S., at 494 ("Federal courts retain the *authority* to issue the writ [in cases of fundamental miscarriage of justice]"); *id.*, at 494–495 ("If petitioner cannot show cause, the failure to raise the claim in an earlier petition *may* nonetheless be excused if he or she can show that a fundamental miscarriage of justice would result from a failure to entertain the claim"); *Murray* v. *Carrier*, 477 U. S. 478, 496 (1986) ("[W]here a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court *may* grant the writ even in the absence of a showing of cause for the procedural default") (emphasis added in all quotations).

Of course the latter cases provide as much or as little authority for the right reading of the statute as the former provide for the wrong reading. The truth is that there is simply nothing in this scattering of phrases, this handful of silences and assumptions, by which even the conscience most scrupulous in matters of *stare decisis* could count itself bound either way; for in no case after *Kuhlmann* has the question whether § 2244(b) creates an *obligation* to entertain successive or abusive petitions been necessary to the decision. In both *Sawyer* and *McCleskey* the Court affirmed the judgments of lower courts that had dismissed the petition. See *Sawyer*, *supra*, at 338; *McCleskey*, *supra*, at 503. Those decisions could not, and did not, announce *as a*

holding that refusal to entertain a petition can be reversible error.

Rather than advancing a different reading of the statute, the Court gives in essence only one response to all of this: that the law of federal habeas corpus is a product of "the interplay between statutory language and judicially managed equitable considerations." *Ante*, at 319, n. 35. This sort of vague talk might mean one of two things, the first inadequate, the second unconstitutional. It might mean that the habeas corpus statute is riddled with gaps and ambiguities that we have traditionally filled or clarified by a process of statutory interpretation that shades easily into a sort of federal common law. See, *e. g.*, *Brecht* v. *Abrahamson*, 507 U. S. 619, 633 (1993). That is true enough. There assuredly are, however, many legal questions on which the habeas corpus statute is neither silent nor ambiguous; and unless the question in this case is one on which the statute *is* silent or ambiguous (in which event the Court should explain why that is so), the response is irrelevant. On the other hand, the Court's response might mean something altogether different and more alarming: that even where the habeas statute does speak clearly to the question at hand, it is but one "consideratio[n]," *ante*, at 319, n. 35, relevant to resolution of that question. Given that federal courts have no inherent power to issue the writ, *Ex parte Bollman*, 4 Cranch 75, 94–95 (1807), that response would be unconstitutional. See U. S. Const., Art. VI, cl. 2.

There is thus no route of escape from the Court's duty to confront the statute today. I would say, as the statute does, that habeas courts need not entertain successive or abusive petitions. The courts whose decisions we review declined to entertain the petition, and I find no abuse of discretion in the record. (I agree with THE CHIEF JUSTICE that they were correct to use *Sawyer* v. *Whitley*, *supra*, as the legal standard for determining claims of actual innocence. See

ante, at 334.)[3] Therefore, "we should sustain [their] action without saying more." *Salinger*, 265 U. S., at 232.

For these reasons, I respectfully dissent.

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[3] Even if they were wrong in that, it would not be correct to conclude that the *judgment* must necessarily be reversed. See *ante*, at 333–334 (O'CONNOR, J., concurring). Our habeas cases have not so held. See *Wong Doo* v. *United States*, 265 U. S. 239, 241 (1924) (affirming even though "the courts below erred in applying the inflexible doctrine of *res judicata*" to dismiss an abusive petition, because "it does not follow that the judgment should be reversed; for it plainly appears that the situation was one where, according to a sound judicial discretion, controlling weight must have been given to the prior refusal").

Syllabus

McKENNON *v.* NASHVILLE BANNER PUBLISHING CO.

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

No. 93–1543. Argued November 2, 1994—Decided January 23, 1995

Alleging that her discharge by respondent Nashville Banner Publishing Company violated the Age Discrimination in Employment Act of 1967 (ADEA), petitioner McKennon filed suit seeking a variety of legal and equitable remedies available under the ADEA, including backpay. After she admitted in her deposition that she had copied several of the Banner's confidential documents during her final year of employment, the District Court granted summary judgment for the company, holding that McKennon's misconduct was grounds for her termination and that neither backpay nor any other remedy was available to her under the ADEA. The Court of Appeals affirmed on the same rationale.

Held: An employee discharged in violation of the ADEA is not barred from all relief when, after her discharge, her employer discovers evidence of wrongdoing that, in any event, would have led to her termination on lawful and legitimate grounds had the employer known of it. Pp. 356–363.

(a) Such after-acquired evidence is not a complete bar to ADEA recovery. Even if the employee's misconduct may be considered to be supervening grounds for termination, the ADEA violation that prompted the discharge cannot be altogether disregarded. The Act's remedial provisions, 29 U. S. C. § 626(b); see also § 216(b), are designed both to compensate employees for injuries caused by prohibited discrimination and to deter employers from engaging in such discrimination. The private litigant who seeks redress for his or her injuries vindicates both of these objectives, and it would not accord with this scheme if after-acquired evidence of wrongdoing barred all relief. *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 284–287, distinguished. Pp. 356–360.

(b) Nevertheless, after-acquired evidence of the employee's wrongdoing must be taken into account in determining the specific remedy, lest the employer's legitimate concerns be ignored. Because the ADEA simply prohibits discrimination, and does not constrain employers from exercising significant other prerogatives and discretions in the usual course of hiring, promoting, and discharging employees, employee wrongdoing is relevant in taking due account of such lawful preroga-

tives and the employer's corresponding equities arising from the wrongdoing. Pp. 360–361.

(c) The proper boundaries of remedial relief in cases of this type must be addressed on a case-by-case basis. However, as a general rule, neither reinstatement nor front pay is an appropriate remedy. It would be both inequitable and pointless to order the reinstatement of someone the employer would have terminated, and will terminate, in any event and upon lawful grounds. The proper measure of backpay presents a more difficult problem. Once an employer learns about employee wrongdoing that would lead to a legitimate discharge, it cannot be required to ignore the information, even if it is acquired during the course of discovery in a suit against the employer and even if it might have gone undiscovered absent the suit. The beginning point in formulating a remedy should therefore be calculation of backpay from the date of the unlawful discharge to the date the new information was discovered. The court can also consider any extraordinary equitable circumstances that affect the legitimate interests of either party. Pp. 361–362.

(d) Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone had the employer known of it at the time of the discharge. The concern that employers might routinely undertake extensive discovery into an employee's background or job performance to resist ADEA claims is not insubstantial, but the courts' authority to award attorney's fees under §§ 216(b) and 626(b) and to invoke the appropriate provisions of the Federal Rules of Civil Procedure will likely deter most abuses. Pp. 362–363.

9 F. 3d 539, reversed and remanded.

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

Michael E. Terry argued the cause for petitioner. With him on the briefs were *Elaine R. Jones*, *Theodore M. Shaw*, *Charles Stephen Ralston*, and *Eric Schnapper*.

Irving L. Gornstein argued the cause for the United States et al. as *amici curiae* urging reversal. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Patrick*, *Deputy Solicitor General Bender*, *Kent L. Jones*, *Dennis J. Dimsey*, *Mark L. Gross*, *James R. Neely, Jr.*, *Gwendolyn Young Reams*, and *Carolyn L. Wheeler*.

R. Eddie Wayland argued the cause for respondent. With him on the brief was *Elizabeth B. Marney.**

JUSTICE KENNEDY delivered the opinion of the Court.

The question before us is whether an employee discharged in violation of the Age Discrimination in Employment Act of 1967 is barred from all relief when, after her discharge, the employer discovers evidence of wrongdoing that, in any event, would have led to the employee's termination on lawful and legitimate grounds.

I

For some 30 years, petitioner Christine McKennon worked for respondent Nashville Banner Publishing Company. She was discharged, the Banner claimed, as part of a work force reduction plan necessitated by cost considerations. McKennon, who was 62 years old when she lost her job, thought another reason explained her dismissal: her age. She filed suit in the United States District Court for the Middle District of Tennessee, alleging that her discharge violated the Age Discrimination in Employment Act of 1967 (ADEA or Act), 81 Stat. 602, as amended, 29 U. S. C. § 621 *et seq.* (1988

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*Briefs of *amici curiae* urging reversal were filed for the American Federation of Labor and Congress of Industrial Organizations by *Marsha Berzon* and *Laurence Gold;* for the Lawyers' Committee for Civil Rights Under Law et al. by *William F. Sheehan, Steven R. Shapiro, Helen Hershkoff, Michael A. Cooper, Norman Redlich, Thomas J. Henderson, Richard T. Seymour, Sharon R. Vinick,* and *Cathy Ventrell-Monsees;* and for the Women's Legal Defense Fund et al. by *Judith L. Lichtman* and *Donna R. Lenhoff.*

Briefs of *amici curiae* urging affirmance were filed for the Chamber of Commerce of the United States by *Zachary D. Fasman, Charles A. Shanor, Kelly J. Koelker, Stephen A. Bokat,* and *Robin S. Conrad;* and for the Equal Employment Advisory Council et al. by *Douglas S. McDowell, Ann Elizabeth Reesman, Lee T. Paterson, Dwight H. Vincent, John F. Sturm, René P. Milam,* and *Peter G. Stone.*

Jeffrey Robert White, Nancy Erika Smith, and *Neil Mullin* filed a brief for the National Employment Lawyers Association et al. as *amici curiae.*

ed. and Supp. V). The ADEA makes it unlawful for any employer:

> "to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U. S. C. § 623(a)(1).

McKennon sought a variety of legal and equitable remedies available under the ADEA, including backpay. App. 10a–11a.

In preparation of the case, the Banner took McKennon's deposition. She testified that, during her final year of employment, she had copied several confidential documents bearing upon the company's financial condition. She had access to these records as secretary to the Banner's comptroller. McKennon took the copies home and showed them to her husband. Her motivation, she averred, was an apprehension she was about to be fired because of her age. When she became concerned about her job, she removed and copied the documents for "insurance" and "protection." Deposition, Dec. 18, 1991, Record, Docket Entry No. 39, Vol. 2, p. 241. A few days after these deposition disclosures, the Banner sent McKennon a letter declaring that removal and copying of the records was in violation of her job responsibilities and advising her (again) that she was terminated. The Banner's letter also recited that had it known of McKennon's misconduct it would have discharged her at once for that reason.

For purposes of summary judgment, the Banner conceded its discrimination against McKennon. The District Court granted summary judgment for the Banner, holding that McKennon's misconduct was grounds for her termination and that neither backpay nor any other remedy was available to her under the ADEA. 797 F. Supp. 604 (MD Tenn. 1992). The United States Court of Appeals for the Sixth Circuit affirmed on the same rationale. 9 F. 3d 539 (1993). We

granted certiorari, 511 U. S. 1106 (1994), to resolve conflicting views among the Courts of Appeals on the question whether all relief must be denied when an employee has been discharged in violation of the ADEA and the employer later discovers some wrongful conduct that would have led to discharge if it had been discovered earlier. Compare *Welch* v. *Liberty Machine Works, Inc.*, 23 F. 3d 1403 (CA8 1994); *O'Driscoll* v. *Hercules Inc.*, 12 F. 3d 176 (CA10 1994); 9 F. 3d 539 (CA6 1993) (case below); *Washington* v. *Lake County*, 969 F. 2d 250 (CA7 1992); *Johnson* v. *Honeywell Information Systems, Inc.*, 955 F. 2d 409 (CA6 1992); *Summers* v. *State Farm Mutual Automobile Ins. Co.*, 864 F. 2d 700 (CA10 1988); *Smallwood* v. *United Air Lines, Inc.*, 728 F. 2d 614 (CA4), cert. denied, 469 U. S. 832 (1984), with *Mardell* v. *Harleysville Life Ins. Co.*, 31 F. 3d 1221 (CA3 1994); *Kristufek* v. *Hussman Foodservice Co., Toastmaster Div.*, 985 F. 2d 364 (CA7 1993); *Wallace* v. *Dunn Construction Co.*, 968 F. 2d 1174 (CA11 1992), vacated pending rehearing en banc, 32 F. 3d 1489 (1994). We now reverse.

II

We shall assume, as summary judgment procedures require us to assume, that the sole reason for McKennon's initial discharge was her age, a discharge violative of the ADEA. Our further premise is that the misconduct revealed by the deposition was so grave that McKennon's immediate discharge would have followed its disclosure in any event. The District Court and the Court of Appeals found no basis for contesting that proposition, and for purposes of our review we need not question it here. We do question the legal conclusion reached by those courts that after-acquired evidence of wrongdoing which would have resulted in discharge bars employees from any relief under the ADEA. That ruling is incorrect.

The Court of Appeals considered McKennon's misconduct, in effect, to be supervening grounds for termination. That

may be so, but it does not follow, as the Court of Appeals said in citing one of its own earlier cases, that the misconduct renders it "'irrelevant whether or not [McKennon] was discriminated against.'" 9 F. 3d, at 542, quoting *Milligan-Jensen* v. *Michigan Technological Univ.*, 975 F. 2d 302, 305 (CA6 1992), cert. granted, 509 U. S. 943, cert. dism'd, 509 U. S. 903 (1993). We conclude that a violation of the ADEA cannot be so altogether disregarded.

The ADEA, enacted in 1967 as part of an ongoing congressional effort to eradicate discrimination in the workplace, reflects a societal condemnation of invidious bias in employment decisions. The ADEA is but part of a wider statutory scheme to protect employees in the workplace nationwide. See Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (1988 ed. and Supp. V) (race, color, sex, national origin, and religion); the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.* (1988 ed., Supp. V) (disability); the National Labor Relations Act, 29 U. S. C. § 158(a) (union activities); the Equal Pay Act of 1963, 29 U. S. C. § 206(d) (sex). The ADEA incorporates some features of both Title VII and the Fair Labor Standards Act of 1938, which has led us to describe it as "something of a hybrid." *Lorillard* v. *Pons*, 434 U. S. 575, 578 (1978). The substantive, antidiscrimination provisions of the ADEA are modeled upon the prohibitions of Title VII. See *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S. 111, 121 (1985); *Lorillard* v. *Pons*, *supra*, at 584. Its remedial provisions incorporate by reference the provisions of the Fair Labor Standards Act of 1938. 29 U. S. C. § 626(b). When confronted with a violation of the ADEA, a district court is authorized to afford relief by means of reinstatement, backpay, injunctive relief, declaratory judgment, and attorney's fees. *Ibid.;* see also *Lorillard* v. *Pons*, *supra*, at 584. In the case of a willful violation of the Act, the ADEA authorizes an award of liquidated damages equal to the backpay award. 29 U. S. C. § 626(b). The Act also gives federal courts the

discretion to "grant such legal or equitable relief as may be appropriate to effectuate the purposes of [the Act]." *Ibid.*

The ADEA and Title VII share common substantive features and also a common purpose: "the elimination of discrimination in the workplace." *Oscar Mayer & Co.* v. *Evans*, 441 U. S. 750, 756 (1979). Congress designed the remedial measures in these statutes to serve as a "spur or catalyst" to cause employers "to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges" of discrimination. *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 417–418 (1975) (internal quotation marks and citation omitted); see also *Franks* v. *Bowman Transp. Co.*, 424 U. S. 747, 763 (1976). Deterrence is one object of these statutes. Compensation for injuries caused by the prohibited discrimination is another. *Albemarle Paper Co.* v. *Moody*, *supra*, at 418; *Franks* v. *Bowman Transp. Co.*, *supra*, at 763–764. The ADEA, in keeping with these purposes, contains a vital element found in both Title VII and the Fair Labor Standards Act: It grants an injured employee a right of action to obtain the authorized relief. 29 U. S. C. § 626(c). The private litigant who seeks redress for his or her injuries vindicates both the deterrence and the compensation objectives of the ADEA. See *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36, 45 (1974) ("[T]he private litigant [in Title VII] not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices"); see also *Teamsters* v. *United States*, 431 U. S. 324, 364 (1977). It would not accord with this scheme if after-acquired evidence of wrongdoing that would have resulted in termination operates, in every instance, to bar all relief for an earlier violation of the Act.

The objectives of the ADEA are furthered when even a single employee establishes that an employer has discriminated against him or her. The disclosure through litigation of incidents or practices that violate national policies re-

specting nondiscrimination in the work force is itself important, for the occurrence of violations may disclose patterns of noncompliance resulting from a misappreciation of the Act's operation or entrenched resistance to its commands, either of which can be of industry-wide significance. The efficacy of its enforcement mechanisms becomes one measure of the success of the Act.

The Court of Appeals in this case relied upon two of its earlier decisions, *Johnson* v. *Honeywell Information Systems, Inc.*, 955 F. 2d 409 (CA6 1992); *Milligan-Jensen* v. *Michigan Technological Univ.*, 975 F. 2d 302 (CA6 1992), and the opinion of the Court of Appeals for the Tenth Circuit in *Summers* v. *State Farm Mutual Automobile Ins. Co.*, 864 F. 2d 700 (1988). Consulting those authorities, it declared that it had "firmly endorsed the principle that after-acquired evidence is a complete bar to any recovery by the former employee where the employer can show it would have fired the employee on the basis of the evidence." 9 F. 3d, at 542. *Summers*, in turn, relied upon our decision in *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274 (1977), but that decision is inapplicable here.

In *Mt. Healthy* we addressed a mixed-motives case, in which two motives were said to be operative in the employer's decision to fire an employee. One was lawful, the other (an alleged constitutional violation) unlawful. We held that if the lawful reason alone would have sufficed to justify the firing, the employee could not prevail in a suit against the employer. The case was controlled by the difficulty, and what we thought was the lack of necessity, of disentangling the proper motive from the improper one where both played a part in the termination and the former motive would suffice to sustain the employer's action. *Id.*, at 284–287.

That is not the problem confronted here. As we have said, the case comes to us on the express assumption that an unlawful motive was the sole basis for the firing. McKennon's misconduct was not discovered until after she had been

fired. The employer could not have been motivated by knowledge it did not have and it cannot now claim that the employee was fired for the nondiscriminatory reason. Mixed-motive cases are inapposite here, except to the important extent they underscore the necessity of determining the employer's motives in ordering the discharge, an essential element in determining whether the employer violated the federal antidiscrimination law. See *Price Waterhouse* v. *Hopkins*, 490 U. S. 228, 252 (1989) (plurality opinion) (employer's legitimate reason for discharge in mixed-motive case will not suffice "if that reason did not motivate it at the time of the decision"); *id.*, at 260–261 (White, J., concurring in judgment); *id.*, at 261 (O'Connor, J., concurring in judgment). As has been observed, "proving that the same decision would have been justified . . . is not the same as proving that the same decision would have been made." *Id.*, at 252 (plurality opinion) (internal quotation marks and citations omitted); see also *id.*, at 260–261 (White, J., concurring in judgment).

Our inquiry is not at an end, however, for even though the employer has violated the Act, we must consider how the after-acquired evidence of the employee's wrongdoing bears on the specific remedy to be ordered. Equity's maxim that a suitor who engaged in his own reprehensible conduct in the course of the transaction at issue must be denied equitable relief because of unclean hands, a rule which in conventional formulation operated *in limine* to bar the suitor from invoking the aid of the equity court, 2 S. Symons, Pomeroy's Equity Jurisprudence § 397, pp. 90–92 (5th ed. 1941), has not been applied where Congress authorizes broad equitable relief to serve important national policies. We have rejected the unclean hands defense "where a private suit serves important public purposes." *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U. S. 134, 138 (1968) (Sherman and Clayton Antitrust Acts). That does not mean, however, the employee's own misconduct is irrelevant to all the reme-

dies otherwise available under the statute. The statute controlling this case provides that "the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for [amounts owing to a person as a result of a violation of this chapter]." 29 U. S. C. § 626(b); see also § 216(b). In giving effect to the ADEA, we must recognize the duality between the legitimate interests of the employer and the important claims of the employee who invokes the national employment policy mandated by the Act. The employee's wrongdoing must be taken into account, we conclude, lest the employer's legitimate concerns be ignored. The ADEA, like Title VII, is not a general regulation of the workplace but a law which prohibits discrimination. The statute does not constrain employers from exercising significant other prerogatives and discretions in the course of the hiring, promoting, and discharging of their employees. See *Price Waterhouse* v. *Hopkins*, *supra*, at 239 ("Title VII eliminates certain bases for distinguishing among employees while otherwise preserving employers' freedom of choice"). In determining appropriate remedial action, the employee's wrongdoing becomes relevant not to punish the employee, or out of concern "for the relative moral worth of the parties," *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, *supra*, at 139, but to take due account of the lawful prerogatives of the employer in the usual course of its business and the corresponding equities that it has arising from the employee's wrongdoing.

The proper boundaries of remedial relief in the general class of cases where, after termination, it is discovered that the employee has engaged in wrongdoing must be addressed by the judicial system in the ordinary course of further decisions, for the factual permutations and the equitable considerations they raise will vary from case to case. We do conclude that here, and as a general rule in cases of this type,

neither reinstatement nor front pay is an appropriate remedy. It would be both inequitable and pointless to order the reinstatement of someone the employer would have terminated, and will terminate, in any event and upon lawful grounds.

The proper measure of backpay presents a more difficult problem. Resolution of this question must give proper recognition to the fact that an ADEA violation has occurred which must be deterred and compensated without undue infringement upon the employer's rights and prerogatives. The object of compensation is to restore the employee to the position he or she would have been in absent the discrimination, *Franks* v. *Bowman Transp. Co.*, 424 U. S., at 764, but that principle is difficult to apply with precision where there is after-acquired evidence of wrongdoing that would have led to termination on legitimate grounds had the employer known about it. Once an employer learns about employee wrongdoing that would lead to a legitimate discharge, we cannot require the employer to ignore the information, even if it is acquired during the course of discovery in a suit against the employer and even if the information might have gone undiscovered absent the suit. The beginning point in the trial court's formulation of a remedy should be calculation of backpay from the date of the unlawful discharge to the date the new information was discovered. In determining the appropriate order for relief, the court can consider taking into further account extraordinary equitable circumstances that affect the legitimate interests of either party. An absolute rule barring any recovery of backpay, however, would undermine the ADEA's objective of forcing employers to consider and examine their motivations, and of penalizing them for employment decisions that spring from age discrimination.

Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that the wrongdoing was of such severity that the employee in fact would

have been terminated on those grounds alone if the employer had known of it at the time of the discharge. The concern that employers might as a routine matter undertake extensive discovery into an employee's background or performance on the job to resist claims under the Act is not an insubstantial one, but we think the authority of the courts to award attorney's fees, mandated under the statute, 29 U. S. C. §§ 216(b), 626(b), and to invoke the appropriate provisions of the Federal Rules of Civil Procedure will deter most abuses.

The judgment is reversed, and the case is remanded to the Court of Appeals for the Sixth Circuit for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

DUNCAN, WARDEN *v.* HENRY

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

No. 94–941. Decided January 23, 1995

Respondent, a rector and dean of a church day school, was convicted in a California court of sexually molesting a student. At trial, he objected to testimony by the parent of another child who claimed to have been molested 20 years earlier. On direct appeal, he argued that this error was a "miscarriage of justice" under the State Constitution, but the state appellate court found the error harmless. Respondent then filed a federal habeas petition, alleging that the evidentiary error violated federal due process, an argument that he had not made in the state proceedings. The District Court found that he had exhausted his state remedies and granted the petition. The Court of Appeals affirmed.

Held: Respondent did not exhaust his state remedies. If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must be alerted to the fact that the prisoners are asserting claims under the United States Constitution. See *Picard* v. *Connor*, 404 U. S. 270; *Anderson* v. *Harless*, 459 U. S. 4. Since respondent did not raise his federal due process argument in the state court, that court understandably confined its analysis to the application of state law.

Certiorari granted; 33 F. 3d 1037, reversed.

PER CURIAM.

Respondent, a rector and dean of a church day school, was tried and convicted in state court of sexually molesting a 5-year-old student. At trial, respondent objected to testimony by the parent of another child who claimed to have been molested 20 years previously. His objection was based on Cal. Evid. Code Ann. § 352 (West 1966). On direct appeal, he pursued his evidentiary objection and requested the appellate court to find that the error was a "miscarriage of justice" under the California Constitution. California ap-

plies this provision in determining whether or not an error was harmless. *People* v. *Watson*, 46 Cal. 2d 818, 299 P. 2d 243 (1956). The California Court of Appeal found the error harmless and affirmed respondent's conviction. *People* v. *Henry*, No. CR23041 (2d Dist. 1990), App. D to Pet. for Cert. 6.

Respondent then filed a petition for writ of habeas corpus in federal court, alleging that the evidentiary error amounted to a denial of due process under the United States Constitution. The District Court granted the petition and the Court of Appeals for the Ninth Circuit affirmed. *Henry* v. *Estelle*, 33 F. 3d 1037 (1994). The court held that respondent had exhausted his state remedies even though he had not claimed a violation of any federal constitutional right in the state proceedings:

> "In his direct appeal in state court, Henry did not label his claim a federal due process violation; he argued rather that Hackett's testimony was erroneously admitted because irrelevant and inflammatory, and that its admission resulted in a 'miscarriage of justice' under the California Constitution. However, to state a federal due process claim it is not necessary to invoke 'the talismanic phrase "due process of law"' or cite 'book and verse on the federal constitution' . . . ." *Id.*, at 1040 (citations omitted).

In *Picard* v. *Connor*, 404 U. S. 270, 275 (1971), we said that exhaustion of state remedies requires that petitioners "fairly presen[t]" federal claims to the state courts in order to give the State the "'opportunity to pass upon and correct' alleged violations of its prisoners' federal rights" (some internal quotation marks omitted). If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted to the fact that the pris-

oners are asserting claims under the United States Constitution. If a habeas petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but in state court. Accord, *Anderson* v. *Harless*, 459 U. S. 4 (1982).

Picard and *Harless* control the outcome in this case. Respondent did not apprise the state court of his claim that the evidentiary ruling of which he complained was not only a violation of state law, but denied him the due process of law guaranteed by the Fourteenth Amendment. The failure is especially pronounced in that respondent did specifically raise a due process objection before the state court based on a different claim—that the pleading was uncertain as to when the offense occurred. App. D to Pet. for Cert. 8. The California Court of Appeal analyzed the evidentiary error by asking whether its prejudicial effect outweighed its probative value, not whether it was so inflammatory as to prevent a fair trial. 33 F. 3d, at 1046. As recognized by dissenting Judge Brunetti, those standards are no more than "'somewhat similar,'" *id.*, at 1047, not "virtually identical" as claimed by JUSTICE STEVENS, *post*, at 369. Both *Picard* and *Harless* emphasized that mere similarity of claims is insufficient to exhaust. *Picard*, *supra*, at 276; *Harless*, *supra*, at 6. The state court, when presented with respondent's claim of error under the California Evidentiary Code, understandably confined its analysis to the application of state law.

Accordingly, the petition for a writ of certiorari is granted and the judgment of the Court of Appeals is

Reversed.

JUSTICE SOUTER, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in the judgment.

I concur in the judgment because respondent's "miscarriage of justice" claim in state court was reasonably under-

stood to raise a state-law issue of prejudice, not a federal issue of due process. Consequently, no federal claim was "fairly presented to the state courts" within the meaning of *Picard* v. *Connor*, 404 U. S. 270, 275 (1971).

JUSTICE STEVENS, dissenting.

Today's opinion sets forth a new rule of law that is a substantial departure from our precedents. In my opinion, it is unwise for the Court to announce a new rule without first hearing argument on the issue. The Court's opinion is especially distressing because it creates an exacting pleading requirement that serves no legitimate purpose in our habeas corpus jurisprudence.

In *Picard* v. *Connor*, 404 U. S. 270 (1971), after full briefing and argument, the Court issued an opinion carefully explaining the rule that a state prisoner must exhaust his state-court remedies before applying for a federal writ of habeas corpus. We held that the exhaustion requirement is satisfied when "the federal claim has been fairly presented to the state courts." *Id.*, at 275. We made it clear, however, that the prisoner need not place the correct label on his claim, or even cite the Federal Constitution, as long as the substance of the federal claim has been fairly presented.

As we explained: "Obviously there are instances in which 'the ultimate question for disposition,' *United States ex rel. Kemp* v. *Pate*, 359 F. 2d 749, 751 (CA7 1966), will be the same despite variations in the legal theory or factual allegations urged in its support. A ready example is a challenge to a confession predicated upon psychological as well as physical coercion." *Id.*, at 277. Thus, until today, prisoners have not been required to exhaust their federal claims "by citing 'book and verse on the federal constitution.'" *Id.*, at 278 (citation omitted). Rather, the rule has been simply that

they must present "the substance of a federal habeas corpus claim . . . to the state courts." *Ibid.*

Today the Court tightens the pleading screws by adding the requirement that the state courts "must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution." *Ante*, at 365–366. As support for that proposition the Court cites *Picard* and *Anderson* v. *Harless*, 459 U. S. 4 (1982), but neither case is in point. In the former, the Court pointed out that the claim asserted in state court—that an indictment was invalid under Massachusetts law—was different from the equal protection claim first raised in federal court; in the latter, the Court carefully explained why it concluded that the state-law basis for objecting to a jury instruction differed from the federal rule announced in *Sandstrom* v. *Montana*, 442 U. S. 510 (1979). While I disagreed with the view that Harless' federal claim had not been fairly presented to the state courts, see 459 U. S., at 9–12 (dissenting opinion), I surely did not understand the Court's opinion to hold that the exhaustion doctrine includes an exact labeling requirement.

Nor have the Courts of Appeals demonstrated any such understanding of *Harless* or *Picard*. To the contrary, the Circuits have analyzed the exhaustion question without rigidly insisting that a prisoner invoke the "talismanic" language of federal law. See *Tamapua* v. *Shimoda*, 796 F. 2d 261, 263 (CA9 1986); see also, *e. g.*, *Hawkins* v. *West*, 706 F. 2d 437, 439–440 (CA2 1983); *Lesko* v. *Owens*, 881 F. 2d 44, 50 (CA3 1989), cert. denied, 493 U. S. 1036 (1990); *West* v. *Wright*, 931 F. 2d 262, 266 (CA4 1991), rev'd on other grounds, 505 U. S. 277 (1992); *Satter* v. *Leapley*, 977 F. 2d 1259, 1262 (CA8 1992); *Bowser* v. *Boggs*, 20 F. 3d 1060, 1063 (CA10), cert. denied, *post*, p. 926; *Nichols* v. *Sullivan*, 867 F. 2d 1250, 1252–1253 (CA10), cert. denied, 490 U. S. 1112

(1989); *Hutchins* v. *Wainwright,* 715 F. 2d 512, 518–519 (CA11 1983), cert. denied, 465 U. S. 1071 (1984).

The new rule the Court announces today is hypertechnical and unwise. It will prolong litigation without serving any valid purpose. The example of a challenge to a coerced confession cited in *Picard,* 404 U. S., at 277, illustrates the point. If a prisoner presents all his evidence to a state court, and if the standard for judging the voluntariness of a confession under state law is the same as under federal law, the state court has had a fair opportunity to pass on the claim regardless of whether the prisoner relies on both the State and Federal Constitutions or just the former. If the state courts have considered and rejected such a claim on state-law grounds, nothing is to be gained by requiring the prisoner to present the same claim under a different label to the same courts that have already found it insufficient. The cost of needless litigation is, however, significant both to the judicial system, see *Harless,* 459 U. S., at 8 (STEVENS, J., dissenting), and to persons like respondent who are imprisoned despite their meritorious federal claims.

In the case before us today, the Court of Appeals for the Ninth Circuit carefully analyzed the exhaustion issue. On the merits, respondent presented the Court of Appeals with a federal due process claim, the crux of which was that the testimony of Thomas Hackett, a witness for the prosecution, was so inflammatory and irrelevant as to render his trial fundamentally unfair. Cf. *Estelle* v. *McGuire,* 502 U. S. 62, 75 (1991) (severely prejudicial evidentiary errors may violate due process). Respondent had challenged the admission of Hackett's testimony on direct appeal in state court. 33 F. 3d 1037, 1040 (CA9 1994). To be sure, he had cited only state law. *Ibid.* As carefully explained by the Court of Appeals, however, the standards for addressing respondent's state-law claims were virtually identical to those applied in

federal court on habeas review. *Id.*, at 1041–1042. Thus, after full discussion of the issue, the Ninth Circuit concluded that respondent had exhausted his claims.[1]

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[1] The contrast between the Ninth Circuit's thoughtful opinion and this Court's cursory disposition of an important issue is best illustrated by quoting the lower court's reasoning in full:

"To satisfy the exhaustion requirement, the petitioner must have fairly presented the substance of his federal claim to the state courts. *Picard v. Connor*, 404 U. S. 270, 277–78 . . . (1971). The purpose of this 'fair presentation' requirement is to 'provide the state courts with a "fair opportunity" to apply controlling legal principles to the facts bearing upon his constitutional claim.' *Anderson v. Harless*, 459 U. S. 4, 6 . . . (1982) (quoting *Picard*, 404 U. S. at 276–77 . . .). We have held that a federal claim 'is fairly presented if the petitioner has described the operative facts and legal theory upon which his claim is based.' *Tamapua v. Shimoda*, 796 F. 2d 261, 262 (9th Cir. 1986).

"There is no doubt that Henry presented the 'operative facts' to the California court. The question is whether he presented the 'legal theory.' Henry's federal habeas claim is that the erroneous admission of evidence at his state criminal trial, followed by the jury instruction, violated his federal constitutional right to due process and was so prejudicial as to require reversal of the conviction. In his direct appeal in state court, Henry did not label his claim a federal due process violation; he argued rather that Hackett's testimony was erroneously admitted because irrelevant and inflammatory, and that its admission resulted in a 'miscarriage of justice' under the California Constitution. Cal. Const. art. VI, § 13. However, to state a federal due process claim it is not necessary to invoke 'the talismanic phrase "due process of law"' or cite 'book and verse on the federal constitution;' petitioner need only make 'essentially the same arguments' before the state and federal courts to exhaust a claim. *Tamapua*, 796 F. 2d at 262–63. Thus, under *Picard* and *Anderson*, exhaustion requires only that petitioner present 'the substance of the federal claim' in state court. *Id.* at 262. We find that Henry has done so, regarding both his argument that the erroneous admission of the testimony and the instructional error were a violation of his federal due process right and his argument that the error was so prejudicial as to warrant reversal.

"As to the first point, it is well established that denial of due process in a state criminal trial 'is the failure to observe that fundamental fairness essential to the very concept of justice. [The court] must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial.' *Lisenba v.*

Judge Brunetti dissented from the majority's analysis, but on a ground that is entirely different from that advanced by this Court in what appears to be its hold-

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California, 314 U. S. 219, 236 . . . (1941). Henry's federal due process claim is that the admission of Hackett's testimony, along with the instructions concerning it, deprived him of a fair trial. He argues that Hackett's testimony was not probative of any material issue in his case unless the jury assumed a fact about which it had heard no testimony: that Hackett's son's accusation was true. He further argues that the jury instructions encouraged the jury to make this impermissible, highly prejudicial assumption. His claim is thus that 'there are *no* permissible inferences the jury may draw' from Hackett's testimony, and that it is 'of such [inflammatory] quality as necessarily prevents a fair trial.' *Jammal v. Van de Kamp*, 926 F. 2d 918, 920 (9th Cir. 1991); *see also Estelle v. McGuire*, 502 U. S. 62, [70] . . . (1991) (inflammatory evidence that is irrelevant may work a due process violation).

"Henry made 'essentially the same arguments,' *Tamapua*, 796 F. 2d at 262, in his opening brief to the California Court of Appeal. He claimed that Hackett's testimony was 'not relevant—it had no tendency to prove or disprove any disputed fact that was of consequence to the determination of the action.' He added that the jury instruction 'compounded the error' because, in encouraging the jury to see Hackett's testimony as relevant, it 'as much as said that defendant had molested [Hackett's son] 20 years before.' The Court of Appeal agreed, and wrote in its disposition that Hackett's testimony, while 'inherently inflammatory,' had 'no probative value at all.'

"We reach the same conclusion as to the essential identity of Henry's state and federal arguments regarding the prejudicial effect of the error. Under California law, a miscarriage of justice is reversible only when 'it is reasonably probable that a result more favorable to [defendant] would have been reached in the absence of the error.' *Watson*, 299 P. 2d at 254. The federal standard, recently set forth by the Supreme Court in *Brecht v. Abrahamson*, [507 U. S. 619] (1993), is phrased somewhat differently, but is essentially the same test; the Supreme Court held that in reviewing a collateral challenge based on a 'trial-type' constitutional error, a federal court will not reverse the conviction unless the error ' "had substantial and injurious effect or influence in determining the jury's verdict." ' *Id.*, at 623 . . . (quoting *Kotteakos v. United States*, 328 U. S. 750, 776 . . . (1946)).

"The errors that occurred at Henry's trial—the introduction of Hackett's testimony and the subsequent jury instruction—were clearly errors of the

ing.[2] He did not merely argue that there was no exhaustion because the prisoner had failed to cite the Federal Constitution. Rather, he carefully explained his view that the federal claim differed from the state claim because it was governed by the harmless-error standard in *Chapman* v. *California*, 386 U. S. 18 (1967), rather than a California standard similar to *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993). I am inclined to believe that the majority had the better of the argument because the *Brecht* standard would apply in the federal habeas proceeding. But the important point of the dissent is that, like the majority, it correctly perceived the exhaustion question as whether the claim had been fairly presented to the state courts, not whether respondent had attached the correct label.

'trial type' because they 'occurred during the presentation of the case to the jury.' *Arizona v. Fulminante*, 499 U. S. 279, 307 . . . (1991). Therefore, under the new *Brecht* harmless error standard, we must inquire whether the testimony had a 'substantial and injurious effect or influence' on the verdict. This standard is similar to the *Watson* standard used by California courts; under both tests, reversal is required if the error had a significant inculpatory impact. When the California Court of Appeal determined that it was not 'reasonably probable' that Henry would have been acquitted had the Hackett testimony not been introduced (the *Watson* standard), it effectively determined that the testimony had not had a 'substantial and injurious effect or influence' on the outcome (the *Brecht* standard).

"Henry has thus made 'essentially the same arguments' before the state and federal courts regarding both the existence of federal constitutional error and the prejudicial impact thereof. We hold that he has exhausted his state post-conviction remedies." 33 F. 3d, at 1040–1042 (footnote omitted).

[2] At the end of its opinion, the Court seems to back away from any ironclad labeling requirement by endorsing Judge Brunetti's view that respondent's federal claim was different in important respects from the argument that was presented in state court. If the Court seeks to reverse the Ninth Circuit on these grounds, without overruling the rule of *Harless* and *Picard*, much of the language in the Court's opinion is nothing more than unnecessary dicta. The confusion on this critical point is itself a reason to avoid summary disposition of this case.

This Court should not abruptly terminate thoughtful debate among conscientious Circuit judges by summarily announcing a new rule. If we are to depart from the standard set forth in *Picard* and *Harless*, we should do so only after thorough consideration with the benefit of full briefing and argument. I respectfully dissent.

Syllabus

LEBRON *v.* NATIONAL RAILROAD PASSENGER CORPORATION

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

No. 93–1525. Argued November 7, 1994—Decided February 21, 1995

Petitioner Lebron, who creates billboard displays that comment on public issues, filed suit claiming, *inter alia*, that respondent National Railroad Passenger Corporation (Amtrak) had violated his First Amendment rights by rejecting a display for an Amtrak billboard because of its political nature. The District Court ruled that Amtrak, because of its close ties to the Federal Government, was a Government actor for First Amendment purposes, and that its rejection of the display was unconstitutional. The Court of Appeals reversed, noting that Amtrak was, by the terms of the legislation that created it, not a Government entity, and concluding that the Government was not so involved with Amtrak that the latter's decisions could be considered federal action.

Held: Where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of that corporation's directors, the corporation is part of the Government for purposes of the First Amendment. Pp. 378–400.

(a) It is proper for this Court to consider the argument that Amtrak is part of the Government, even though Lebron disavowed it in both lower courts and did not explicitly raise it until his brief on the merits here. It is not a new claim, but a new argument to support his First Amendment claim, see, *e. g.*, *Yee* v. *Escondido*, 503 U. S. 519, 534–535; it was passed upon below, see, *e. g.*, *United States* v. *Williams*, 504 U. S. 36, 41; and it was fairly embraced within both the question presented and the argument set forth in the petition. Pp. 378–383.

(b) Amtrak was created by the Rail Passenger Service Act of 1970 (RPSA) to avert the threatened extinction of passenger trains in the interest of "the public convenience and necessity." The legislation establishes detailed goals for Amtrak, sets forth its structure and powers, and assigns the appointment of a majority of its board of directors to the President. Pp. 383–386.

(c) There is a long history of corporations created and participated in by the United States for the achievement of governmental objectives. Like some other Government corporations, Amtrak's authorizing stat-

Syllabus

ute provides that it "will not be an agency or establishment of the United States Government," 84 Stat. 1330; see also 45 U. S. C. § 541. Pp. 386–391.

(d) Although § 541 is assuredly dispositive of Amtrak's governmental status for purposes of matters within Congress's control—*e. g.*, whether it is subject to statutes like the Administrative Procedure Act—and can even suffice to deprive it of all those inherent governmental powers and immunities that Congress has the power to eliminate—*e. g.*, sovereign immunity from suit—it is not for Congress to make the final determination of Amtrak's status as a Government entity for purposes of determining the constitutional rights of citizens affected by its actions. The Constitution constrains governmental action by whatever instruments or in whatever modes that action may be taken, *Ex parte Virginia*, 100 U. S. 339, 346–347, and under whatever congressional label, *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536, 539. *National Railroad Passenger Corporation* v. *Boston & Maine Corp.*, 503 U. S. 407, 410, and *National Railroad Passenger Corporation* v. *Atchison, T. & S. F. R. Co.*, 470 U. S. 451, 470, distinguished. Pp. 392–394.

(e) Amtrak is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution. This conclusion accords with the public, judicial, and congressional understanding over the years that Government-created and -controlled corporations are part of the Government itself. See, *e. g.*, *Reconstruction Finance Corporation* v. *J. G. Menihan Corp.*, 312 U. S. 81, 83; Government Corporation Control Act, § 304(a), 59 Stat. 602. A contrary holding would allow government to evade its most solemn constitutional obligations by simply resorting to the corporate form, cf. *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U. S. 230, 231. *Bank of United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904, 907, 908, and *Regional Rail Reorganization Act Cases*, 419 U. S. 102, 152, distinguished. Pp. 394–399.

12 F. 3d 388, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, *post*, p. 400.

David D. Cole argued the cause for petitioner. With him on the briefs were *R. Bruce Rich* and *Gloria C. Phares.*

Kevin T. Baine argued the cause for respondent. With him on the brief were *Nicole K. Seligman*, *Stephen C. Rogers*, and *Louis R. Cohen*.*

JUSTICE SCALIA delivered the opinion of the Court.

In this case we consider whether actions of the National Railroad Passenger Corporation, commonly known as Amtrak, are subject to the constraints of the Constitution.

I

Petitioner, Michael A. Lebron, creates billboard displays that involve commentary on public issues, and that seemingly propel him into litigation. See, *e. g.*, *Lebron* v. *Washington Metropolitan Area Transit Authority*, 749 F. 2d 893 (CADC 1984). In August 1991, he contacted Transportation Displays, Incorporated (TDI), which manages the leasing of the billboards in Amtrak's Pennsylvania Station in New York City, seeking to display an advertisement on a billboard of colossal proportions, known to New Yorkers (or at least to the more Damon Runyonesque among them) as "the Spectacular." The Spectacular is a curved, illuminated billboard, approximately 103 feet long and 10 feet high, which dominates the main entrance to Penn Station's waiting room and ticket area.

On November 30, 1992, Lebron signed a contract with TDI to display an advertisement on the Spectacular for two months beginning in January 1993. The contract provided that "[a]ll advertising copy is subject to approval of TDI and [Amtrak] as to character, text, illustration, design and operation." App. 671. Lebron declined to disclose the specific content of his advertisement throughout his negotiations

*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union by *Stephen R. Shapiro*, *Marjorie Heins*, and *Arthur N. Eisenberg;* and for the NAACP Legal Defense and Educational Fund, Inc., et al. by *James F. Fitzpatrick*, *Elliot M. Mincberg*, and *Lawrence S. Ottinger*.

with TDI, although he did explain to TDI that it was generally political. On December 2, he submitted to TDI (and TDI later forwarded to Amtrak) an advertisement described by the District Court as follows:

> "The work is a photomontage, accompanied by considerable text. Taking off on a widely circulated Coors beer advertisement which proclaims Coors to be the 'Right Beer,' Lebron's piece is captioned 'Is it the Right's Beer Now?' It includes photographic images of convivial drinkers of Coors beer, juxtaposed with a Nicaraguan village scene in which peasants are menaced by a can of Coors that hurtles towards them, leaving behind a trail of fire, as if it were a missile. The accompanying text, appearing on either end of the montage, criticizes the Coors family for its support of right-wing causes, particularly the contras in Nicaragua. Again taking off on Coors' advertising which uses the slogan of 'Silver Bullet' for its beer cans, the text proclaims that Coors is 'The Silver Bullet that aims The Far Right's political agenda at the heart of America.' " 811 F. Supp. 993, 995 (SDNY 1993).

Amtrak's vice president disapproved the advertisement, invoking Amtrak's policy, inherited from its predecessor as landlord of Penn Station, the Pennsylvania Railroad Company, "that it will not allow political advertising on the [S]pectacular advertising sign." App. 285.

Lebron then filed suit against Amtrak and TDI, claiming, *inter alia*, that the refusal to place his advertisement on the Spectacular had violated his First and Fifth Amendment rights. After expedited discovery, the District Court ruled that Amtrak, because of its close ties to the Federal Government, was a Government actor, at least for First Amendment purposes, and that its rejection of Lebron's proposed advertisement as unsuitable for display in Penn Station had violated the First Amendment. The court granted Lebron an

injunction and ordered Amtrak and TDI to display Lebron's advertisement on the Spectacular.

The United States Court of Appeals for the Second Circuit reversed. 12 F. 3d 388 (1993). The panel's opinion first noted that Amtrak was, by the terms of the legislation that created it, not a Government entity, *id.*, at 390; and then concluded that the Federal Government was not so involved with Amtrak that the latter's decisions could be considered federal action, *id.*, at 391–392. Chief Judge Newman dissented. We granted certiorari. 511 U. S. 1105 (1994).

II

We have held once, *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (1961), and said many times, that actions of private entities can sometimes be regarded as governmental action for constitutional purposes. See, *e. g.*, *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522, 546 (1987); *Blum* v. *Yaretsky*, 457 U. S. 991, 1004 (1982); *Moose Lodge No. 107* v. *Irvis*, 407 U. S. 163, 172 (1972). It is fair to say that "our cases deciding when private action might be deemed that of the state have not been a model of consistency." *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, 632 (1991) (O'Connor, J., dissenting). It may be unnecessary to traverse that difficult terrain in the present case, since Lebron's first argument is that Amtrak is not a private entity but Government itself. Before turning to the merits of this argument, however, it is necessary to discuss the propriety of reaching it. Lebron did not raise this point below; indeed, he expressly disavowed it in both the District Court and the Court of Appeals. See Plaintiff's Pre-Trial Proposed Conclusions of Law in No. 92–CIV–9411 (SDNY), p. 12, n. 1, reprinted in App. in No. 93–7127 (CA2), p. 1297; Brief for Appellee in No. 93–7127 (CA2), p. 30, n. 39. In those courts Lebron argued that Amtrak's actions were subject to constitutional requirements because Amtrak, *al-*

though a private entity, was closely connected with federal entities. It was not until after we granted certiorari that Lebron first explicitly presented—in his brief on the merits—the alternative argument that Amtrak was itself a federal entity.

Our traditional rule is that "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *Escondido,* 503 U. S. 519, 534 (1992); see also *Dewey* v. *Des Moines,* 173 U. S. 193, 198 (1899). Lebron's contention that Amtrak is part of the Government is in our view not a new claim within the meaning of that rule, but a new argument to support what has been his consistent claim: that Amtrak did not accord him the rights it was obliged to provide by the First Amendment. Cf. *Yee, supra,* at 534–535. In fact, even if this *were* a claim not raised by petitioner below, we would ordinarily feel free to address it, since it was addressed by the court below. Our practice "permit[s] review of an issue not pressed so long as it has been passed upon . . . ." *United States* v. *Williams,* 504 U. S. 36, 41 (1992). See *Virginia Bankshares, Inc.* v. *Sandberg,* 501 U. S. 1083, 1099, n. 8 (1991); *Stevens* v. *Department of Treasury,* 500 U. S. 1, 8 (1991).

Respondent asserts that, in addition to not having been raised below, the issue of whether Amtrak is a Government entity was not presented in the petition for certiorari. As this Court's Rule 14.1(a) and simple prudence dictate, we will not reach questions not fairly included in the petition. "The Court decides which questions to consider through well-established procedures; allowing the able counsel who argue before us to alter these questions or to devise additional questions at the last minute would thwart this system." *Taylor* v. *Freeland & Kronz,* 503 U. S. 638, 646 (1992). Here, however, we are satisfied that the argument that Amtrak is a Government entity is fairly embraced within the question

set forth in the petition for certiorari[1]—which explicitly presents *neither* the "Government entity" theory *nor* the "closely connected to Government" theory of First Amendment application, but rather the facts that would support both. The argument in the petition, moreover, though couched in terms of a different but closely related theory, fairly embraced the argument that Lebron now advances. See Pet. for Cert. 16–18.

The dissent contends that the "Government entity" question in the present case occupies the same status, insofar as Rule 14.1(a) is concerned, as the "physical taking" question which we deemed excluded in *Yee* v. *Escondido*, *supra.* It gives two reasons for that equivalence: First, the fact that Lebron prefaced his question presented by the phrase, "Whether the court of appeals erred in holding." App. to Pet. for Cert. i. The dissent asserts that this is similar to the preface in *Yee*, which had the effect of limiting the question to the precise ground relied upon by the Court of Appeal. *Post*, at 402. But the preface in *Yee* was not at all similar. What we said caused the question presented to be limited to the physical-taking issue was *not* the fact that that was the only ground addressed by the lower-court-said-to-be-in-error; but rather the fact that that was the only ground of decision in two previous Court of Appeals cases, *departure*

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[1] Certiorari was sought and granted in this case on the following question:

"Whether the court of appeals erred in holding that Amtrak's asserted policy barring the display of political advertising messages in Pennsylvania Station, New York, was not state action, where:

"(a) the United States created Amtrak, endowed it with governmental powers, owns all its voting stock, and appoints all members of its Board;

"(b) the United States-appointed Board approved the advertising policy challenged here;

"(c) the United States keeps Amtrak afloat every year by subsidizing its losses; and

"(d) Pennsylvania Station was purchased for Amtrak by the United States and is shared with several other governmental entities."

from which was said by the question presented to be the issue in the appeal.[2] 503 U. S., at 536–537.

The dissent's second reason for believing that *Yee* governs the Rule 14.1(a) issue here is that the structural relationship between the clearly presented question and the assertedly included question in the two cases is the same. As the dissent correctly analyzes *Yee*, it involved one "umbrella claim" (government taking of property without just compensation) and "two distinct questions" that were "[s]ubsidiary to that claim" (whether a physical taking had occurred, and whether a regulatory taking had occurred). *Post*, at 401. But the questions in *Yee* were "distinct" in two important ways that the claims here are not. First of all, it was possible to consider the existence of a physical taking without *assuming* (as one of the premises of the inquiry) the *nonexistence* of a regulatory taking; whereas here it is quite impossible to consider whether the Government connections are sufficient to convert private-entity Amtrak into a Government actor without first assuming that Amtrak is a private entity. The opinion in *Yee* did not have to begin: "Assuming that no regulatory taking has occurred, ..." But the portion of today's dissent addressing the merits of this case must begin: "Accepting Lebron's concession that Amtrak is a private entity, ..." *Post*, at 408. The question of private-entity status is, in other words, a *prior* question. The second respect in which the issues here are less "distinct" than in *Yee* is that the factors relevant to their resolution overlap. In *Yee*, what would go to show a regulatory taking and

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[2] The question presented in *Yee* read as follows:

"'Two federal courts of appeal have held that the transfer of a premium value to a departing mobilehome tenant, representing the value of the right to occupy at a reduced rate under local mobilehome rent control ordinances, constitute[s] an impermissible taking. Was it error for the state appellate court to disregard the rulings and hold that there was no taking under the fifth and fourteenth amendments?'" 503 U. S., at 536–537.

what would go to show a physical taking were quite different. Here, however, those very elements that we would be considering in determining whether Amtrak-the-private-entity is so closely connected with the Government as to be a Government actor (for example, the constitution of its board) also bear upon whether it is *in fact* a private entity at all. When a question is, like this one, both prior to the clearly presented question and dependent upon many of the same factual inquiries, refusing to regard it as embraced within the petition may force us to assume what the facts will show to be ridiculous, a risk that ought to be avoided.

The recent decision of ours that invites comparison with the dissent's insistence that the "Government entity" question is "precluded," *post,* at 400, is not *Yee,* but *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.,* 508 U. S. 439 (1993). There, in a case raising the question of the proper interpretation of 12 U. S. C. § 92 (1926 ed.), we upheld the propriety of the Court of Appeals' considering the prior question whether 12 U. S. C. § 92 had been inadvertently repealed—even though the parties themselves had failed to raise that question, not only (as here) in the court below, but even in the initial briefs and oral arguments before the Court of Appeals itself. That is to say, the situation there, at the court of appeals level, was what the situation *would be* before us here, if (1) the dissent were correct that Rule 14.1(a) was not complied with, and (2) in addition, even the petitioner's *principal brief and oral argument* had failed to raise the "Government entity" issue. Even so, we held in *Independent Insurance Agents* that it was proper for the Court of Appeals to request supplemental briefing upon, and to decide, the statutory repeal question, and we then went on to inquire into that question ourselves. Our opinion was unanimous, not a single Justice protesting that the judges of the Court of Appeals, or of this Court, had constituted

themselves "'as [a] self-directed boar[d] of legal inquiry'" or had "exhibit[ed] little patience," *post*, at 408.[3]

III

Before proceeding to consider Lebron's contention that Amtrak, though nominally a private corporation, must be regarded as a Government entity for First Amendment purposes, we examine the nature and history of Amtrak and of Government-created corporations in general.

A

Congress established Amtrak in order to avert the threatened extinction of passenger trains in the United States.

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[3] The dissent sees no more in *Independent Ins. Agents* than a narrow holding that the Court of Appeals' decision to reach the statutory repeal issue was not *so* imprudent as to be reversible for abuse of discretion. Even that is a damaging concession, given the dissent's apparent position that allowing a litigant "to resuscitate [a] claim that he himself put to rest" always violates "prudential" rules. *Post*, at 406. But in fact the language of the *Independent Ins. Agents* opinion is much more approving of the Court of Appeals' action than that. It declines even to brush aside the Court of Appeals' (questionable) contention that there was "a 'duty' to address the status of section 92," saying only that "[w]e need not decide" that question. 508 U. S., at 448. And it goes on to state that the Court of Appeals acted "without *any* impropriety," and that its decision to consider the issue was "*certainly* no abuse of its discretion." *Ibid.* (emphasis added). If we had not thought that the Court of Appeals' entertainment of the statutory repeal question was, not merely unreversible, but appropriate, we would not have rendered ourselves complicit in the enterprise by exercising our own discretion to grant certiorari on that question. (There was no particular need to intervene, since the Court of Appeals had upheld the law.)

The dissent also seeks to characterize *Independent Ins. Agents* as no more than an application of "the traditional principle that there can be no estoppel in the way of ascertaining the existence of a law." *Post*, at 404 (internal quotation marks omitted). It was indeed an application of that principle insofar as concerned the claim that the appellants' right to assert repeal of the statute had been forfeited. But forfeit was not the only point decided in the case: not every nonforfeited claim merits consideration on appeal.

The statute that created it begins with the congressional finding, redolent of provisions of the Interstate Commerce Act, see, *e. g.*, 49 U. S. C. §§ 10901, 10903, 10922 (1988 ed. and Supp. V), that "the *public convenience and necessity* require the continuance and improvement" of railroad passenger service. Rail Passenger Service Act of 1970 (RPSA), § 101, 84 Stat. 1328 (emphasis added). In the current version of the RPSA, 45 U. S. C. § 501 *et seq.* (1988 ed. and Supp. V), the congressional findings are followed by a section entitled "Goals," which begins, "The Congress hereby establishes the following goals for Amtrak," and includes items of such detail as the following:

> "(3) Improvement of the number of passenger miles generated systemwide per dollar of Federal funding by at least 30 percent within the two-year period beginning on October 1, 1981.
>
> "(4) Elimination of the deficit associated with food and beverage services by September 30, 1982.
>
> . . . . .
>
> "(6) Operation of Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables for such operation.
>
> . . . . .
>
> "(8) Implementation of schedules which provide a systemwide average speed of at least 60 miles per hour . . . ." § 501a.

Later sections of the statute authorize Amtrak's incorporation, §§ 541–542, set forth its structure and powers, §§ 543–545, and outline procedures under which Amtrak will relieve private railroads of their passenger-service obligations and provide intercity and commuter rail passenger service itself, §§ 561–566. See generally *National Railroad Passenger Corporation* v. *Atchison, T. & S. F. R. Co.*, 470 U. S. 451, 453–456 (1985). As initially conceived, Amtrak was to be

"a for profit corporation," 84 Stat. 1330, but Congress later modified this language to provide, less optimistically perhaps, that Amtrak "shall be operated and managed as a for profit corporation," § 541.

Amtrak is incorporated under the District of Columbia Business Corporation Act, D. C. Code Ann. § 29–301 *et seq.* (1981 and Supp. 1994), but is subject to the provisions of that Act only insofar as the RPSA does not provide to the contrary, see § 541. It does provide to the contrary with respect to many matters of structure and power, including the manner of selecting the company's board of directors. The RPSA provides for a board of nine members, six of whom are appointed directly by the President of the United States. The Secretary of Transportation, or his designee, sits ex officio. § 543(a)(1)(A). The President appoints three more directors with the advice and consent of the Senate, § 543(a)(1)(C), selecting one from a list of individuals recommended by the Railway Labor Executives Association, § 543(a)(1)(C)(i), one "from among the Governors of States with an interest in rail transportation," § 543(a)(1)(C)(ii), and one as a "representative of business with an interest in rail transportation," § 543(a)(1)(C)(iii). These directors serve 4-year terms. § 543(a)(2)(A). The President appoints two additional directors without the involvement of the Senate, choosing them from a list of names submitted by various commuter rail authorities. § 543(a)(1)(D). These directors serve 2-year terms. § 543(a)(2)(B). The holders of Amtrak's preferred stock select two more directors, who serve 1-year terms. § 543(a)(1)(E). Since the United States presently holds all of Amtrak's preferred stock, which it received (and still receives) in exchange for its subsidization of Amtrak's perennial losses, see § 544(c), the Secretary of Transportation selects these two directors. The ninth member of the board is Amtrak's president, § 543(a)(1)(B), who serves as the chairman of the board, § 543(a)(4), is selected by the other eight directors, and serves at their pleasure, § 543(d).

Amtrak's four private shareholders have not been entitled to vote in selecting the board of directors since 1981.[4]

By § 548 of the RPSA, Amtrak is required to submit three different annual reports to the President and Congress. One of these, a "report on the effectiveness of this chapter in meeting the requirements for a balanced national transportation system, together with any legislative recommendations," is made part of the Department of Transportation's annual report to Congress. § 548(c).

B

Amtrak is not a unique, or indeed even a particularly unusual, phenomenon. In considering the question before us, it is useful to place Amtrak within its proper context in the long history of corporations created and participated in by the United States for the achievement of governmental objectives.

The first was the Bank of the United States, created by the Act of Feb. 25, 1791, ch. 10, 1 Stat. 191, which authorized the United States to subscribe 20 percent of the corporation's stock, *id.*, at 196. That Bank expired pursuant to the terms of its authorizing Act 20 years later. A second Bank of the United States, the bank of *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), and *Osborn* v. *Bank of United States*, 9 Wheat. 738 (1824), was incorporated by the Act of April 10, 1816, 3

[4] Originally, Amtrak's board comprised 15 directors: 7 selected by the shareholders and 8 (one of whom had to be the Secretary of Transportation) appointed by the President of the United States. See RPSA §§ 303(a) and (c), 84 Stat. 1330–1331. In 1973, Congress increased the number of directors to 17, the number of Presidential appointees to 9, and made the Secretary of Transportation a director ex officio. See Amtrak Improvement Act of 1973, § 3(a), 87 Stat. 548. In 1976, the number of Presidential appointees (apart from the Secretary of Transportation) was reduced to eight and Amtrak's president made a director ex officio. See Rail Transportation Improvement Act, § 103, 90 Stat. 2615. Amtrak's board was given its current size and membership in 1981. See Omnibus Budget Reconciliation Act of 1981, § 1174, 95 Stat. 689.

Stat. 266, which provided that the United States would subscribe 20 percent of the Bank's capital stock, *ibid.*, and in addition that the President would appoint, by and with the advice and consent of the Senate, 5 of the Bank's 25 directors, the rest to be elected annually by shareholders other than the United States, *id.*, at 269.

The second Bank's charter expired of its own force, despite fierce efforts by the Bank's supporters to renew it, in 1836. See generally R. Remini, Andrew Jackson and the Bank War 155–175 (1967). During the remainder of the 19th century, the Federal Government continued to charter private corporations, see, *e. g.*, Act of July 2, 1864, 13 Stat. 365 (Northern Pacific Railroad Company), but only once participated in such a venture itself: the Union Pacific Railroad, chartered in 1862 with the specification that two of its directors would be appointed by the President of the United States. Act of July 1, 1862, § 1, 12 Stat. 491. See F. Leazes, Jr., Accountability and the Business State 117, n. 8 (1987) (hereinafter Leazes).

The Federal Government's first participation in a corporate enterprise in which (as with Amtrak) it appointed a majority of the directors did not occur until the present century. In 1902, to facilitate construction of the Panama Canal, Congress authorized the President to purchase the assets of the New Panama Canal Company of France, including that company's stock holdings in the Panama Railroad Company, a private corporation chartered in 1849 by the State of New York. See Act of June 28, 1902, 32 Stat. 481; see also General Accounting Office, Reference Manual of Government Corporations, S. Doc. No. 86, 79th Cong., 1st Sess., 176 (1945) (hereinafter GAO Corporation Manual). The United States became the sole shareholder of the Panama Railroad, and continued to operate it under its original charter, with the Secretary of War, as the holder of the stock, electing the Railroad's 13 directors. *Id.*, at 177; Joint Committee on Reduction of Nonessential Federal Expenditures, Reduction of Nonessential Federal Expenditures, S. Doc. No. 227,

78th Cong., 2d Sess., 20 (1944) (hereinafter Reduction of Expenditures).

The first large-scale use of Government-controlled corporations came with the First World War. In 1917 and 1918, Congress created, among others, the United States Grain Corporation, the United States Emergency Fleet Corporation, the United States Spruce Production Corporation, and the War Finance Corporation. See Leazes 20. These entities were dissolved after the war ended. See Reduction of Expenditures 1.

The Great Depression brought the next major group of Government corporations, which proved to be more enduring. These were primarily directed to stabilizing the economy and to making distress loans to farms, homeowners, banks, and other enterprises. See R. Moe, CRS Report for Congress, Administering Public Functions at the Margins of Government: The Case of Federal Corporations 6–7 (1983). The Reconstruction Finance Corporation (RFC), to take the premier example, was initially authorized to make loans to banks, insurance companies, railroads, land banks, and agricultural credit organizations, including loans secured by the assets of failed banks. See Act of Jan. 22, 1932, § 5, 47 Stat. 6–7. The Federal Deposit Insurance Corporation (FDIC), was established to hold and liquidate the assets of failed banks, and to insure bank deposits. See Act of June 16, 1933, ch. 89, § 8, 48 Stat. 168, as amended, 12 U. S. C. § 1811 *et seq.* (1988 ed. and Supp. V). And a few corporations, such as the Tennessee Valley Authority (TVA), brought the Government into the commercial sale of goods and services. See Act of May 18, 1933, ch. 32, 48 Stat. 58, as amended, 16 U. S. C. § 831 *et seq.* (1988 ed. and Supp. V).

The growth of federal corporations during the Depression and the World War II era was not limited to the numerous entities specifically approved by Congress. In 1940, Congress empowered the RFC to create corporations without specific congressional authorization. See Act of June 25,

1940, § 5, 54 Stat. 573–574. The RFC proceeded to do so with gusto, incorporating on its own the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company (which itself created several subsidiaries), the Petroleum Reserves Corporation, the Rubber Development Corporation, and the War Damage Corporation, among others. See GAO Corporation Manual 32, 38, 169, 182, 219, 279. Other corporations were formed, sometimes under state law, without even the general congressional authorization granted the RFC. For example, the Defense Homes Corporation was organized under Maryland law by the Secretary of the Treasury, using emergency funds allocated to the President, *id.*, at 28 ("It is not clear what, if any, specific Federal statutory authority was relied upon for the creation of the Defense Homes Corporation"); and the Tennessee Valley Associated Cooperatives, Inc., was chartered under Tennessee law by the TVA, *id.*, at 244 ("There has been found no Federal statute specifically authorizing the Board of Directors of the Tennessee Valley Authority to organize a corporation"). By 1945, the General Accounting Office's Reference Manual of Government Corporations listed 58 government corporations, with total assets (in 1945 dollars) of $29.6 billion. See *id.*, at iii, v–vi.

By the end of World War II, Government-created and -controlled corporations had gotten out of hand, in both their number and their lack of accountability. Congress moved to reestablish order in the Government Corporation Control Act (GCCA), 59 Stat. 597, as amended, 31 U. S. C. § 9101 *et seq.* (1988 ed. and Supp. V). See Pritchett, The Government Corporation Control Act of 1945, 40 Am. Pol. Sci. Rev. 495 (1946). The GCCA required that specified corporations, both wholly owned and partially owned by the Government, be audited by the Comptroller General. See 59 Stat. 599, 600. Additionally, the wholly owned corporations were required, for the first time, to submit budgets which would be included in the budget submitted annually to Congress by

the President. *Id.*, at 598; see also Leazes 22–23. The GCCA also ordered the dissolution or liquidation of all government corporations created under state law, except for those that Congress should act to reincorporate; and prohibited creation of new Government corporations without specific congressional authorization. 59 Stat. 602; cf. 31 U. S. C. § 9102.

Thus, in the years immediately following World War II, many Government corporations were dissolved, and to our knowledge only one, the Saint Lawrence Seaway Development Corporation, was created. See Leazes 25, 27. In the 1960's, however, the allure of the corporate form was felt again, and new entities proliferated. Many of them followed the traditional model, often explicitly designated as Government agencies and located within the existing Government structure. See, *e. g.*, Foreign Assistance Act of 1969, § 105, 83 Stat. 809 (creating the Overseas Private Investment Corporation as "an agency of the United States under the policy guidance of the Secretary of State"), as amended, 22 U. S. C. § 2191 *et seq.* (1988 ed. and Supp. V). Beginning in 1962, however, the Government turned to sponsoring corporations that it specifically designated *not* to be agencies or establishments of the United States Government, and declined to subject to the control mechanisms of the GCCA. The first of these, the Communications Satellite Corporation (Comsat), was incorporated under the District of Columbia Business Corporation Act, D. C. Code Ann. § 29–301 *et seq.* (1981 and Supp. 1994), see 47 U. S. C. § 731 *et seq.*, with the purpose of entering the private sector, but doing so with Government-conferred advantages, see Moe, *supra*, at 22. Comsat was capitalized entirely with private funds. See Seidman, Government-sponsored Enterprise in the United States, in The New Political Economy: The Public Use of the Private Sector 92 (B. Smith ed. 1975). In contrast to the corporations that had in the past been deemed part of the Government, Comsat's board was to be controlled by its private

shareholders; only 3 of its 15 directors were appointed by the President, § 733(a).

The Comsat model, which was seen as allowing the Government to act unhindered by the restraints of bureaucracy and politics, see Moe, CRS Report, at 22, 24, was soon followed in creating other corporations. But some of these new "private" corporations, though said by their charters not to be agencies or instrumentalities of the Government, see, *e. g.*, 47 U. S. C. § 396(b) (Corporation for Public Broadcasting (CPB)); 42 U. S. C. § 2996d(e)(1) (Legal Services Corporation (LSC)), and though not subjected to the restrictions of the GCCA, were (unlike Comsat) managed by boards of directors on which Government appointees had not just a few votes but voting control. See Public Broadcasting Act of 1967, § 201, 81 Stat. 369 (CPB's entire board appointed by President); Legal Services Corporation Act of 1974, § 2, 88 Stat. 379 (same for LSC).

Amtrak is yet another variation upon the Comsat theme. Like Comsat, CPB, and LSC, its authorizing statute declares that it "will not be an agency or establishment of the United States Government." 84 Stat. 1330; see 45 U. S. C. § 541. Unlike Comsat, but like CPB and LSC, its board of directors is controlled by Government appointees. And unlike all three of those "private" corporations, it *has* been added to the list of corporations covered by the GCCA, see 31 U. S. C. § 9101 (1988 ed. and Supp. V). As one perceptive observer has concluded with regard to the post-Comsat Government-sponsored "private" enterprises:

> "There is no valid basis for distinguishing between many government-sponsored enterprises and other types of government activities, except for the fact that they are designed [designated?] by law as 'not an agency and instrumentality of the United States Government.' Comparable powers and immunities could be granted to such agencies without characterizing them as non-government." Seidman, *supra*, at 93.

IV

Amtrak claims that, whatever its relationship with the Federal Government, its charter's disclaimer of agency status prevents it from being considered a Government entity in the present case. This reliance on the statute is misplaced. Section 541 is assuredly dispositive of Amtrak's status as a Government entity for purposes of matters that are within Congress's control—for example, whether it is subject to statutes that impose obligations or confer powers upon Government entities, such as the Administrative Procedure Act, 5 U. S. C. § 551 *et seq.* (1988 ed. and Supp. V), the Federal Advisory Committee Act, 5 U. S. C. App. § 1 *et seq.*, and the laws governing Government procurement, see 41 U. S. C. § 5 *et seq.* (1988 ed. and Supp. V). And even beyond that, we think § 541 can suffice to deprive Amtrak of all those inherent powers and immunities of Government agencies that it is within the power of Congress to eliminate. We have no doubt, for example, that the statutory disavowal of Amtrak's agency status deprives Amtrak of sovereign immunity from suit, see *Sentner* v. *Amtrak*, 540 F. Supp. 557, 560 (NJ 1982), and of the ordinarily presumed power of Government agencies authorized to incur obligations to pledge the credit of the United States, see, *e. g.*, *Debt Obligations of Nat. Credit Union Admin.*, 6 Op. Off. Legal Counsel 262, 264 (1982). But it is not for Congress to make the final determination of Amtrak's status as a Government entity for purposes of determining the constitutional rights of citizens affected by its actions. If Amtrak is, by its very nature, what the Constitution regards as the Government, congressional pronouncement that it is not such can no more relieve it of its First Amendment restrictions than a similar pronouncement could exempt the Federal Bureau of Investigation from the Fourth Amendment. The Constitution constrains governmental action "by whatever instruments or in whatever modes that action may be taken." *Ex parte Virginia*, 100 U. S. 339, 346–347 (1880). And under whatever congres-

sional label. As we said of the Reconstruction Finance Corporation in deciding whether debts owed it were owed the United States Government: "That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is . . . ." *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536, 539 (1946).

Amtrak points to two of our opinions that characterize Amtrak as a nongovernmental entity. The first is *National Railroad Passenger Corporation* v. *Boston & Maine Corp.*, 503 U. S. 407, 410 (1992), which describes the corporation as "not an agency or instrumentality of the United States Government." But the governmental or nongovernmental nature of Amtrak had no conceivable relevance to the issues before the Court in *Boston & Maine.* The quoted characterization, similar to that contained in the statute, was merely set forth at the beginning of the opinion, in describing the factual background of the case. It is hard to imagine weaker dictum.

The second case is *National Railroad Passenger Corporation* v. *Atchison, T. & S. F. R. Co.*, 470 U. S. 451 (1985). There the governmental character of Amtrak *was* marginally relevant. The railroads opposing Amtrak in the case argued that a subsequent statute reneging on the Government's *own* obligations was subject to a "more rigorous standard of review" under the Due Process Clause than a statute impairing private contractual obligations. *Id.*, at 471. The Court said it did not have to consider that question because the contracts in question were "not between the railroads and the United States but simply between the railroads and the nongovernmental corporation, Amtrak." *Id.*, at 470. But it develops, later in the opinion, that the Court would not have had to consider that question anyway, since it concluded that the contracts (whether those of the United States or not) did not incur the obligation alleged. The effect of the apparent reliance upon Amtrak's nongov-

ernmental character was *at most* to enable the Court to make, later in the opinion, without applying the "more rigorous standard" urged by the railroads, the superfluous argument that "[e]ven were the Court of Appeals correct that the railroads have a private contractual right . . . we disagree with the Court of Appeals' conclusion that the Due Process Clause limited Congress' power to [affect that right as it did]." *Id.*, at 476. Moreover, for the purpose at hand in *Atchison* it was quite proper for the Court to treat Congress's assertion of Amtrak's nongovernmental status in § 541 as conclusive. As we have suggested above, even if Amtrak *is* a Government entity, § 541's disavowal of that status certainly suffices to disable that agency from incurring contractual obligations on behalf of the United States. For these reasons, we think that *Atchison*'s assumption of Amtrak's nongovernmental status (a point uncontested by the parties in the case, since it was not Amtrak's governmental character that the railroads relied upon to establish an obligation of the United States) does not bind us here.

V

The question before us today is unanswered, therefore, by governing statutory text or by binding precedent of this Court. Facing the question of Amtrak's status for the first time, we conclude that it is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution.

This conclusion seems to us in accord with public and judicial understanding of the nature of Government-created and -controlled corporations over the years. A remarkable feature of the heyday of those corporations, in the 1930's and 1940's, was that, even while they were praised for their status "as agencies separate and distinct, administratively and financially and legally, from the government itself, [which] has facilitated their adoption of commercial methods of accounting and financing, avoidance of political controls, and

utilization of regular procedures of business management," it was fully acknowledged that they were a "device" of "government," and constituted "federal corporate agencies" apart from "regular government departments." Pritchett, 40 Am. Pol. Sci. Rev., at 495. The Reference Manual of Government Corporations, prepared in 1945 by the Comptroller General, contains as one of its Tables "Corporations arranged according to supervising or interested Government department or agency," see GAO Corporation Manual x–xi. This lists the 58 then-extant Government corporations under the various departments and agencies, from the Agriculture Department to the War Department, and then concludes the list with five "Independent corporations"—analogous, one supposes, to the "independent agencies" of the Executive Branch proper. The whole tenor of the Manual is that these corporations are part of the Government.

This Court has shared that view. For example, in *Reconstruction Finance Corporation* v. *J. G. Menihan Corp.*, 312 U. S. 81 (1941), Chief Justice Hughes, writing for the Court, described the RFC, whose organic statute did not state it to be a Government instrumentality, as, nonetheless, "a corporate agency of the government," and said that "it acts as a governmental agency in performing its functions." *Id.*, at 83. In *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536 (1946), we had little difficulty finding that the RFC was "an agency selected by Government to accomplish purely governmental purposes," *id.*, at 539, and was thus entitled to the benefit of a statute giving the Court of Claims jurisdiction over "counterclaims . . . on the part of the Government of the United States," 28 U. S. C. § 250(2) (1940 ed.). Likewise in *Inland Waterways Corp.* v. *Young*, 309 U. S. 517 (1940), we found that the Inland Waterways Corporation, which similarly was not specifically designated in its charter as an instrumentality of the United States, see Act of June 3, 1924, 43 Stat. 360, was an agency of the United States, so that its funds were "public moneys" for which national banks

could give security under § 45 of the National Bank Act of 1864, 13 Stat. 113, 309 U. S., at 523–524. Justice Frankfurter wrote for the Court:

> "So far as the powers of a national bank to pledge its assets are concerned, the form which Government takes—whether it appears as the Secretary of the Treasury, the Secretary of War, or the Inland Waterways Corporation—is wholly immaterial. The motives which lead Government to clothe its activities in corporate form are entirely unrelated to the problem of safeguarding governmental deposits . . . ." *Id.*, at 523.

Even Congress itself appeared to acknowledge, at least until recent years, that Government-created and -controlled corporations were part of the Government. The GCCA, discussed above, which brought to an end the era of uncontrolled growth of Government corporations, provided that, without explicit congressional authorization, no corporation should be acquired or created by "any officer or agency of the Federal Government or by any Government corporation *for the purpose of acting as an agency or instrumentality of the United States* . . . ." § 304(a), 59 Stat. 602 (emphasis added). That was evidently intended to restrict the creation of *all* Government-controlled policy-implementing corporations, and not just some of them. And the companion provision that swept away many of the extant corporations said that no wholly owned government corporation created under state law could continue "as an agency or instrumentality of the United States," § 304(b), 59 Stat. 602. Once again, that was evidently meant to eliminate policy-implementing government ownership of *all* state corporations, and not just some of them. From the 1930's onward, many of the statutes creating Government-controlled corporations said explicitly that they were agencies or instrumentalities of the United States, see, *e. g.*, Act of June 9, 1947, § 1, 61 Stat. 130, as amended, 12 U. S. C. § 635 (creating the

Export-Import Bank of Washington as "an agency of the United States of America"); Federal Crop Insurance Act, § 503, 52 Stat. 72, 7 U. S. C. § 1503 (creating Federal Crop Insurance Corporation as "an agency of and within the Department of Agriculture"), and until 1962 none said otherwise. As we have described above, moreover, those later statutes, relatively few in number, took that statement, perhaps too uncritically, from an earlier statute pertaining to a corporation (Comsat) that was *genuinely* private and *not* Government controlled.

That Government-created and -controlled corporations are (for many purposes at least) part of the Government itself has a strong basis, not merely in past practice and understanding, but in reason itself. It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form. On that thesis, *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), can be resurrected by the simple device of having the State of Louisiana operate segregated trains through a state-owned Amtrak. In *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U. S. 230 (1957) *(per curiam)*, we held that Girard College, which had been built and maintained pursuant to a privately erected trust, was nevertheless a governmental actor for constitutional purposes because it was operated and controlled by a board of state appointees, which was itself a state agency. *Id.*, at 231. Amtrak seems to us an *a fortiori* case.

Amtrak was created by a special statute, explicitly for the furtherance of federal governmental goals. As we have described, six of the corporation's eight externally named directors (the ninth is named by a majority of the board itself) are appointed directly by the President of the United States—four of them (including the Secretary of Transportation) with the advice and consent of the Senate. See §§ 543(a)(1)(A), (C)–(D). Although the statute restricts most of the President's choices to persons suggested by certain

organizations or persons having certain qualifications, those restrictions have been tailor-made by Congress for this entity alone. They do not in our view establish an absence of control by the Government as a whole, but rather constitute a restriction imposed by one of the political branches upon the other. Moreover, Amtrak is not merely in the temporary control of the Government (as a private corporation whose stock comes into federal ownership might be); it is established and organized under federal law for the very purpose of pursuing federal governmental objectives, under the direction and control of federal governmental appointees. It is in that respect no different from the so-called independent regulatory agencies such as the Federal Communications Commission or the Securities Exchange Commission, which are run by Presidential appointees with fixed terms. It is true that the directors of Amtrak, unlike commissioners of independent regulatory agencies, are not, by the explicit terms of the statute, removable by the President for cause, and are not impeachable by Congress. But any reduction in the immediacy of accountability for Amtrak directors vis-à-vis regulatory commissioners seems to us of minor consequence for present purposes—especially since, by the very terms of the chartering Act, Congress's "right to repeal, alter, or amend this chapter at any time is expressly reserved." 45 U. S. C. § 541.

Respondent appeals to statements this Court made in a case involving the second Bank of the United States, *Bank of United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904 (1824). There we allowed the Planters' Bank, in which the State of Georgia held a noncontrolling interest, see Act of Dec. 19, 1810, § 1, reprinted in Digest of Laws of State of Georgia 34–35 (O. Prince ed. 1822); Act of Dec. 3, 1811, § 1, *id.*, at 35, to be sued in federal court despite the Eleventh Amendment, reasoning that "[t]he State does not, by becoming a corporator, identify itself with the corporation," 9 Wheat., at 907. "The government of the Union," we said,

"held shares in the old Bank of the United States; but the privileges of the government were not imparted by that circumstance to the bank. The United States was not a party to suits brought by or against the bank in the sense of the constitution." *Id.*, at 908. But it does not contradict those statements to hold that a corporation is an agency of the Government, for purposes of the constitutional obligations of Government rather than the "privileges of the government," when the State has specifically created that corporation for the furtherance of governmental objectives, and not merely holds some shares but controls the operation of the corporation through its appointees.

Respondent also invokes our decision in the *Regional Rail Reorganization Act Cases*, 419 U. S. 102 (1974), which found the Consolidated Rail Corporation, or Conrail, not to be a federal instrumentality, despite the President's power to appoint, directly or indirectly, 8 of its 15 directors. See *id.*, at 152, n. 40; Regional Rail Reorganization Act of 1973, § 301, 87 Stat. 1004. But we specifically observed in that case that the directors were placed on the board to protect the United States' interest "in assuring payment of the obligations guaranteed by the United States," and that "[f]ull voting control . . . will shift to the shareholders if federal obligations fall below 50% of Conrail's indebtedness." 419 U. S., at 152. Moreover, we noted, "[t]he responsibilities of the federal directors are not different from those of the other directors—to operate Conrail at a profit for the benefit of its shareholders," *ibid.*—which contrasts with the public interest "goals" set forth in Amtrak's charter, see 45 U. S. C. § 501a. Amtrak is worlds apart from Conrail: The Government exerts its control not as a creditor but as a policymaker, and no provision exists that will automatically terminate control upon termination of a temporary financial interest.[5]

[5] Section 543(c) purports to divide the authority to select seven directors between the common stockholders and the preferred stockholders upon conversion of one-fourth or more of Amtrak's outstanding preferred stock

* * *

We hold that where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment. We express no opinion as to whether Amtrak's refusal to display Lebron's advertisement violated that Amendment, but leave it to the Court of Appeals to decide that. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, dissenting.

The Court holds that Amtrak is a Government entity and therefore all of its actions are subject to constitutional challenge. Lebron, however, expressly disavowed this argument below, and consideration of this broad and unexpected question is precluded because it was not presented in the petition for certiorari. The question on which we granted certiorari is narrower: Whether the alleged suppression of Lebron's speech by Amtrak, as a concededly private entity, should be imputed to the Government. Because Amtrak's decision to reject Lebron's billboard proposal was a matter of private business judgment and not of Government coercion, I would affirm the judgment below.

I

This Court's Rule 14.1(a) provides: "Only the questions set forth in the petition, or fairly included therein, will be considered by the Court." While "[t]he statement of any question

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to common stock. This subsection was originally enacted in 1970, and has not since been amended. It is irreconcilable with the revised provision for a nine-member board, § 543(a)(1).

presented will be deemed to comprise every subsidiary question," *ibid.*, questions that are merely "related" or "complementary" to the question presented are not "fairly included therein." *Yee* v. *Escondido*, 503 U. S. 519, 537–538 (1992) (emphasis deleted). In *Yee*, we held that a regulatory taking argument, while subsidiary to the umbrella question whether a taking had occurred, was only complementary to the physical taking inquiry set forth in the petition and thus was barred under Rule 14.1(a). See *id.*, at 535. Here, state action is the umbrella claim. Subsidiary to that claim, but complementary to each other, are two distinct questions: whether Amtrak is a Government entity, and whether Amtrak's conduct as a private actor is nevertheless attributable to the Government.

We granted certiorari on the following question, set forth in the petition:

> "Whether the court of appeals erred in holding that Amtrak's asserted policy barring the display of political advertising messages in Pennsylvania Station, New York, was not state action, where:
>
> "(a) the United States created Amtrak, endowed it with governmental powers, owns all its voting stock, and appoints all the members of its Board;
>
> "(b) the United States-appointed Board approved the advertising policy challenged here;
>
> "(c) the United States keeps Amtrak afloat every year by subsidizing its losses; and
>
> "(d) Pennsylvania Station was purchased for Amtrak by the United States and is shared with several other governmental entities." Pet. for Cert. i.

The question asks whether the challenged policy "was not state action" and therefore may, at first blush, appear to present the umbrella inquiry. *Yee* suggests otherwise. The petition there recited two decisions by the Courts of Appeals and asked: "Was it error for the state appellate court to dis-

regard the rulings and hold that there was no taking under the fifth and fourteenth amendments?" Instead of focusing on whether "there was no taking," we read the question as a whole. Since the decisions by the Courts of Appeals and the lower court opinion involved only physical takings, we concluded: "Fairly construed, then, petitioners' question presented is the equivalent of the question, 'Did the court below err in finding no physical taking?' " 503 U. S., at 537.

Just so here. The question asks whether the lower court erred and thus directs our attention to the decisions below. The District Court, in its thorough order, explicitly noted Lebron's theory of the case: "Plaintiff does not contend that Amtrak is a governmental agency. What plaintiff contends is that the federal government is sufficiently entwined in Amtrak's operations and authority that the particular actions at issue must be deemed governmental action." 811 F. Supp. 993, 999 (SDNY 1993). Before the Court of Appeals, in order to distinguish a long line of cases which held that Amtrak is not a Government agency, Lebron stated: "Since Lebron does not contend that Amtrak is a governmental entity per se, but rather is so interrelated to state entities that it should be treated as a state actor here, these cases are inapposite." Brief for Michael A. Lebron in No. 93–7127 (CA2), p. 30, n. 39.

The Court of Appeals, like the District Court, substantively discussed only the second question that Lebron argues here—whether Amtrak's conduct in this case implicates "the presence of government action in the activities of private entities." 12 F. 3d 388, 390 (CA2 1993). To introduce its analysis, the Court of Appeals did state that "[t]he Rail Passenger Service Act of 1970 . . . created Amtrak as a private, for-profit corporation under the District of Columbia Business Corporation Act," *ibid.*, relying on Congress' characterization of the corporation in 45 U. S. C. § 541. In so asserting, the Court of Appeals did not " 'pas[s] upon' " the question such that it is now a proper basis for reversal, *ante*, at 379,

but rather merely identified the question that the court had to address and focused the inquiry on the precise argument presented by Lebron. This observation by the Court of Appeals is much like—indeed, much less extensive than—our discussion of Amtrak's status as a private corporation in *National Railroad Passenger Corporation* v. *Atchison, T. & S. F. R. Co.*, 470 U. S. 451, 453–456 (1985). I agree with the Court that *Atchison* does not bind us, *ante,* at 393–394, but, by the same token, I do not see how the court below could be said to have addressed the issue. A passing observation could not constitute binding precedent; so, too, it could not serve as the basis for reversal.

The question set forth in the petition focused on the specific action by Amtrak, not on the general nature of the corporation as a private or public entity. Lebron asked whether "Amtrak's asserted policy barring the display of political advertising messages in Pennsylvania Station, New York, was not state action." App. to Pet. for Cert. i. The list that follows this question, while partially concerning Amtrak's nature as an entity, went to support the thrust of the query, which is whether these enumerated attributes render Amtrak's advertising policy state action. Lebron's emphasis on the specific action challenged is the crucial difference between his alternative arguments for state action. The first inquiry—whether Amtrak is a Government entity—focuses on whether Amtrak is so controlled by the Government that it should be treated as a Government agency, and all of its decisions considered state action. The second inquiry takes Lebron at his word that Amtrak is *not* a Government entity and instead focuses on the State's influence on particular actions by Amtrak as a private actor.

Fairly construed, the question presented is whether the Court of Appeals erred in holding that the advertising policy of Amtrak, as a private entity, is not attributable to the Federal Government despite the corporation's links thereto. This question is closely related and complementary to, but

certainly not inclusive of, the question answered by the Court today, which is whether those links render Amtrak the functional equivalent of a Government agency. In my view, the latter question is barred by Rule 14.1(a).

Relying on *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439 (1993), the Court argues that it properly addresses whether Amtrak is a Government entity because that inquiry is "prior to the clearly presented question," namely, whether Amtrak's decision is attributable to the Government. *Ante*, at 382. *Independent Ins. Agents*, however, held only that the Court of Appeals had authority to consider a waived claim *sua sponte* and did not abuse its discretion in doing so.* That is quite different from the purpose for which the Court now marshals the case, which is to justify its consideration of a waived question in the first instance. As explained below, I do not question the Court's authority, only its prudence. In any event, the dispute in *Independent Ins. Agents* centered on the interpretation of a statute that may not have existed, and, as the Court recognizes, *ante*, at 383, n. 3, the decision simply applied the traditional principle that "[t]here can be no estoppel in the way of ascertaining the existence of a law." *South Ottawa* v. *Perkins*, 94 U. S. 260, 267 (1877). Here, one need not assume the existence of any predicate legal rule to accept Lebron's word that Amtrak is a private entity.

The mere fact that one question must be answered before another does not insulate the former from Rule 14.1(a) and other waiver rules. In *Stone* v. *Powell*, 428 U. S. 465 (1976),

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*The Court would read more into the decision, because we "decline[d] even to brush aside the Court of Appeals' (questionable) contention that there was 'a "duty" to address the status of section 92,' saying only that '[w]e need not decide' that question." *Ante*, at 383, n. 3. But by (prudently) reserving the question, the Court could not have implied its answer. And our "complicit[y] in the [Court of Appeals'] enterprise," *ibid.*, exists only if one indulges in the unlikely inference that we held more than what we said we did.

we held that Fourth Amendment claims are not ordinarily cognizable in federal habeas proceedings and distinguished several cases by noting that "the issue of the substantive scope of the writ was not presented in the petition[s] for certiorari." *Id.*, at 481, n. 15. We thus recognized that those decisions properly avoided the question of cognizability, which question, of course, is logically anterior to the merits of the Fourth Amendment claims presented. In *Steagald* v. *United States*, 451 U. S. 204, 211 (1981), we held that the Government had conceded that the petitioner had a Fourth Amendment interest in the searched home, an inquiry that precedes the question that was preserved, whether the search was reasonable. In *Kamen* v. *Kemper Financial Services, Inc.*, 500 U. S. 90, 97, n. 4 (1991), because the question was neither litigated below nor included in the petition, we assumed the existence of a cause of action under § 20(a) of the Investment Company Act of 1940 before addressing the requirements of such an action. See also *Burks* v. *Lasker*, 441 U. S. 471, 476 (1979) (assuming same). Finally, in *McCormick* v. *United States*, 500 U. S. 257 (1991), the Court held that a state legislator did not violate the anti-extortion Hobbs Act, 18 U. S. C. § 1951, by accepting campaign contributions without an explicit exchange of improper promises. The Court reached this question only after declining to consider whether the Act applies to local officials at all, because that question was neither argued below nor included in the petition for certiorari. *McCormick*, 500 U. S., at 268, n. 6; see also *id.*, at 280 (SCALIA, J., concurring) (accepting the assumption, because the argument was waived, that the Hobbs Act is a "federal 'payment for official action' statute" even though "I think it well to bear in mind that the statute may not exist").

The Court does not take issue with these cases but argues further that, because the question whether Amtrak is a Government entity is "dependent upon many of the same factual inquiries [as the clearly presented question], refusing to re-

gard it as embraced within the petition may force us to assume what the facts will show to be ridiculous, a risk which ought to be avoided." *Ante*, at 382. A certain circularity inheres in this logic, because the Court must first answer the omitted question in order to determine whether its answer turns on "the same factual inquiries" as the clearly presented question. As for the facts, the record is shaped by the parties' arguments below. Perhaps serendipity has given the Court a factual record adequate to decide a question other than that advanced below, but there is no guarantee of such convergence. It is rather unfair to hold a party to a record that it may have developed differently in response to a different theory of the case. It is this risk of unfairness, rather than the fear of seeming "ridiculous," that we should avoid.

Rule 14.1(a), of course, imposes only a prudential limitation, but one that we disregard "only in the most exceptional cases." *Stone* v. *Powell*, *supra*, at 481, n. 15; see also *United States* v. *Mendenhall*, 446 U. S. 544, 551, n. 5 (1980). This is not one of them. As noted before, not only did Lebron disavow the argument that Amtrak is a Government entity below, he did so in order to distinguish troublesome cases. Lebron's postpetition attempt to resuscitate the claim that he himself put to rest is precisely the kind of bait-and-switch strategy that waiver rules, prudential or otherwise, are supposed to protect against. In *Steagald*, *supra*, at 211, for example, we stated unequivocally that "the Government, through its assertions, concessions, and acquiescence, has lost its right to challenge petitioner's assertion that he possessed a legitimate expectation of privacy in the searched home." I see no difference here.

The Rule's prudential limitation on our power of review serves two important purposes, both of which the Court disserves by deciding that Amtrak is a Government entity. First, the Rule provides notice and enables the respondent to sharpen its arguments in opposition to certiorari. "By

forcing the petitioner to choose his questions at the outset, Rule 14.1(a) relieves the respondent of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions." *Yee*, 503 U. S., at 536. Lebron argues that Amtrak has waived its Rule 14.1(a) argument by failing to object in the brief in opposition to certiorari. But that is exactly the point: The question set forth did not fairly include an argument that Amtrak is a Government agency, and, indeed, the petition was devoted to whether Amtrak's private decision should be imputed to the State. Even at pages 16–18, the petition did not "fairly embrac[e] the argument that Lebron now advances," *ante*, at 380, but rather argued that the composition of Amtrak's board "renders *an otherwise private entity* a state actor," Pet. for Cert. 16 (emphasis added)—thus specifically repeating the concession he now wishes to withdraw. Amtrak could not respond to a point not argued and did not waive an argument that was not at issue. Not until the merits brief did Amtrak have notice that Lebron would contradict his persistent assertion that the corporation was a private entity.

Second, the Rule assists the management of our cases. "Rule 14.1(a) forces the parties to focus on the questions the Court has viewed as particularly important, thus enabling us to make efficient use of our resources." *Yee*, *supra*, at 536. We normally grant only petitions that present an important question of law on which the lower courts are in conflict. Here, the lower courts have generally held that Amtrak is not a Government entity, see, *e. g.*, *Anderson* v. *National Railroad Passenger Corporation*, 754 F. 2d 202, 204 (CA7 1985); *Ehm* v. *National Railroad Passenger Corporation*, 732 F. 2d 1250, 1255 (CA5), cert. denied, 469 U. S. 982 (1984), and none of our cases suggest otherwise. Even where the lower courts are in clear conflict, we often defer consideration of novel questions of law to permit further development. Despite the prevalence of publicly owned corporations, whether they are Government agencies is a question

seldom answered, and then only for limited purposes. See *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536, 539 (1946); *National Railroad Passenger Corporation* v. *Atchison, T. & S. F. R. Co.*, 470 U. S., at 471. Answering this question today merely opens the back door to premature adjudication of similarly broad and novel theories in the future.

Weeding out such endeavors, Rule 14.1(a), like other waiver rules, rests firmly upon a limited view of our judicial power. See, *e. g.*, *Carducci* v. *Regan*, 714 F. 2d 171, 177 (CADC 1983) (Scalia, J.) ("The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them"). "The doctrine of judicial restraint teaches us that patience in the judicial resolution of conflicts may sometimes produce the most desirable result." Stevens, Some Thoughts on Judicial Restraint, 66 Judicature 177, 183 (1982). Whether the result of today's decision is desirable I do not decide. But I think it clear that the Court has exhibited little patience in reaching that result.

II

Accepting Lebron's concession that Amtrak is a private entity, I must "traverse th[e] difficult terrain," *ante*, at 378, that the Court sees fit to avoid, and answer the question that is properly presented to us: whether Amtrak's decision to ban Lebron's speech, although made by a concededly private entity, is nevertheless attributable to the Government and therefore considered state action for constitutional purposes. Reflecting the discontinuity that marks the law in this area, we have variously characterized the inquiry as whether "there is a sufficiently close nexus between the State and the challenged action," *Jackson* v. *Metropolitan Edison Co.*, 419 U. S. 345, 351 (1974); whether the State, by encouraging the challenged conduct, could be thought "*responsible* for those

actions," *Blum* v. *Yaretsky*, 457 U. S. 991, 1005 (1982); and whether "the alleged infringement of federal rights [is] 'fairly attributable to the State,'" *Rendell-Baker* v. *Kohn*, 457 U. S. 830, 838 (1982), quoting *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 937 (1982). Whatever the semantic formulation, I remain of the view that the conduct of a private actor is not subject to constitutional challenge if such conduct is "fundamentally a matter of private choice and not state action." *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, 632 (1991) (O'CONNOR, J., dissenting).

Lebron relies heavily on *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (1961). There, the Court perceived a symbiotic relationship between a racially segregated restaurant and a state agency from which the restaurant leased public space. Noting that the State stood to profit from the discrimination, the Court held that the government had "so far insinuated itself into a position of interdependence with" the private restaurant that it was in effect "a joint participant in the challenged activity." *Id.*, at 725. Focusing on this language, Lebron argues that various features of Amtrak's structure and management—its statutory genesis, the heavy reliance on federal subsidies, and a board appointed by the President—places it in a symbiotic relationship with the Government such that the decision to ban Lebron's speech should be imputed to the State.

Our decision in *Burton*, however, was quite narrow. We recognized "the limits of our inquiry" and emphasized that our decision depended on the "peculiar facts [and] circumstances present." *Id.*, at 726. We have since noted that *Burton* limited its "actual holding to lessees of public property," *Jackson* v. *Metropolitan Edison Co.*, *supra*, at 358, and our recent decisions in this area have led commentators to doubt its continuing vitality, see, *e. g.*, L. Tribe, American Constitutional Law § 18–3, p. 1701, n. 13 (2d ed. 1988) ("The only surviving explanation of the result in *Burton* may be that found in Justice Stewart's concurrence").

In *Jackson*, we held that a private utility's termination of service to a customer is not subject to due process challenge, even though the termination was made pursuant to a state law. In doing so, we made clear that the question turns on whether the challenged conduct results from private choice: "Respondent's exercise of the choice allowed by state law where the initiative comes from it and not from the State, does not make its action in doing so 'state action' for purposes of the Fourteenth Amendment." 419 U. S., at 357 (footnote omitted). The rule applies even where the private entity makes its decision in an environment heavily regulated by the government. *Rendell-Baker*, *supra*, involved a private school for troubled students who were transferred there by authority of a state law, and for whose education the State paid the school. Public funds comprised 90% to 99% of the school budget. The school fired petitioners, and a state grievance board reviewed that personnel action. Despite the school's pervasive ties to the State, we held that the discharge decisions were not subject to constitutional challenge because those actions "were not compelled or even influenced by any state regulation." *Id.*, at 841. We noted that "in contrast to the extensive regulation of the school generally, the various regulators showed relatively little interest in the school's personnel matters." *Ibid.* Likewise, in *Blum* v. *Yaretsky*, *supra*, we held that the decisions of a regulated hospital to discharge its patients were not subject to constitutional challenge. Although various Medicaid regulations and benefit adjustment procedures may have encouraged the hospital's decisions to discharge its patients early, we held that the State was not "*responsible* for those actions" because such actions "ultimately turn on medical judgments made by private parties according to professional standards that are not established by the State." *Id.*, at 1005, 1008. See also *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522, 547 (1987) ("There is no evidence that the Federal Government coerced

or encouraged the USOC in the exercise of its right [to deny use of its copyright]").

These cases differ markedly from the "interdependence" or "joint participation" analysis of *Burton* and stand for the principle that, unless the government affirmatively influenced or coerced the private party to undertake the challenged action, such conduct is not state action for constitutional purposes. *Edmonson* v. *Leesville Concrete Co.*, *supra,* is not to the contrary. In that case, the Court held that a private attorney's exercise of a peremptory challenge is attributable to the government and therefore subject to constitutional inquiry. Although the opinion cited *Burton*, see 500 U. S., at 621, 624, it emphasized that a private party exercising a peremptory challenge enjoys the "overt, significant assistance of the court," *id.*, at 624. The decision therefore is an application of *Shelley* v. *Kraemer*, 334 U. S. 1, 19 (1948), which focused on the use of the State's coercive power, through its courts, to effect the litigant's allegedly unconstitutional choice. Moreover, *Edmonson* stressed that a litigant exercising a peremptory challenge performs a "traditional function of the government," 500 U. S., at 624, a theory of state action established by *Marsh* v. *Alabama*, 326 U. S. 501 (1946), that is independent from *Burton* and not relevant to this case.

Relying thus on *Shelley* and *Marsh*, *Edmonson* did not necessarily extend the "interdependence" rationale of *Burton* beyond the limited facts of that case. Given the pervasive role of government in our society, a test of state action predicated upon public and private "interdependence" sweeps much too broadly and would subject to constitutional challenge the most pedestrian of everyday activities, a problem that the Court recognized in *Burton* itself, see 365 U. S., at 725–726. A more refined inquiry is that established by *Jackson*, *Rendell-Baker*, *Blum*, and *San Francisco Arts & Athletics:* The conduct of a private entity is not subject to constitutional scrutiny if the challenged action results from

the exercise of private choice and not from state influence or coercion.

Applying this principle to the facts before us, I see no basis to impute to the Government Amtrak's decision to disapprove Lebron's advertisement. Although a number of factors indicate the Government's pervasive influence in Amtrak's management and operation, none suggest that the Government had any effect on Amtrak's decision to turn down Lebron's proposal. The advertising policy that allegedly violates the First Amendment originated with a predecessor to Amtrak, the wholly private Pennsylvania Railroad Company. A 1967 lease by that company, for example, prohibited "any advertisement which in the judgement of Licensor is or might be deemed to be slanderous, libelous, unlawful, immoral, [or] offensive to good taste . . . ." App. 326, ¶ 19. Amtrak simply continued this policy after it took over. The specific decision to disapprove Lebron's advertising was made by Amtrak's Vice President of Real Estate and Operations Development, who, as a corporate officer, was neither appointed by the President nor directed by the President-appointed board to disapprove Lebron's proposal.

Lebron nevertheless contends that the board, through its approval of the advertising policy, controlled the adverse action against him. This contention rests on the faulty premise that Amtrak's directors are state actors simply because they were appointed by the President; it assumes that the board members sit as public officials and not as business directors, thus begging the question whether Amtrak is a Government agency or a private entity. In any event, even accepting Lebron's premise that the board's approval has constitutional significance, the factual record belies his contention. The particular lease that permitted Amtrak to disallow Lebron's billboard was neither reviewed nor approved directly by the board. In fact, minutes of meetings dating back to 1985 showed that the board approved only one contract between Amtrak and Transportation Displays, Incor-

porated, the billboard leasing company that served as Amtrak's agent, and even then it is not clear whether the board approved the contract or merely delegated authority to execute the licensing agreement. App. 402. In short, nothing in this case suggests that the Government controlled, coerced, or even influenced Amtrak's decision, made pursuant to corporate policy and private business judgment, to disapprove the advertisement proposed by Lebron.

Presented with this question, the Court of Appeals properly applied our precedents and did not impute Amtrak's decision to the Government. I would affirm on this basis and not reverse the Court of Appeals based on a theory that is foreign to this case. Respectfully, I dissent.

Syllabus

MILWAUKEE BREWERY WORKERS' PENSION PLAN *v.* JOS. SCHLITZ BREWING CO. ET AL.

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

No. 93–768. Argued December 5, 1994—Decided February 21, 1995

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 29 U. S. C. §§ 1381–1461, permits an employer withdrawing from an underfunded multiemployer pension plan to "amortize" the charge it is required to pay to cover its fair share of the plan's unfunded liabilities by making installment payments to the plan. Following the August 14, 1981, withdrawal of respondent Schlitz from petitioner multiemployer pension plan (Plan), a dispute arose as to when, for purposes of calculating Schlitz's amortization schedule, interest began to accrue on the company's withdrawal charge. The Plan claimed that accrual began on the last day of the plan year preceding withdrawal, December 31, 1980, the "valuation date" as of which the withdrawal charge was determined. Schlitz, however, argued for January 1, 1982, the first day of the plan year following withdrawal. Under the Plan's reading, Schlitz's last annual installment would be substantially greater than it would under Schlitz's own reading. The District Court disagreed with Schlitz, but the Court of Appeals reversed.

Held: MPPAA calculates its installment schedule on the assumption that interest begins accruing on the first day of the plan year following withdrawal. Pp. 421–431.

(a) For computation purposes, § 1399(c)(1)(A)(i)—which (the parties agree) governs this case and which authorizes an employer "to amortize the [withdrawal] amount in . . . annual payments . . . , calculated as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent plan year"—causes interest to accrue over subsequent plan years, but not during the withdrawal year itself. Although the statute does not mention interest directly, the word "amortize" assumes interest charges. However, the word does not indicate that interest accrues during the withdrawal year. One generally does not pay interest on a debt of the kind here at issue until that debt arises—*i. e.*, until its principal is outstanding. Under the statute, the withdrawing employer's debt does not arise at the end of the year preceding the year of withdrawal. Rather, § 1399(c)(1)(A)(i)'s instruction to calculate payments as if the "first payment" were

made on the "first day" of the year following withdrawal demonstrates that the debt must be treated as if it arose at that time. The Plan's contrary reading of the statute cannot be easily reconciled with statutory provisions permitting an employer to pay the amount owed in a lump sum and thereby avoid paying amortization interest, § 1399(c)(4), and defining a withdrawing employer's basic liability without reference to interest during the withdrawal year, §§ 1381(b)(1), 1391. Pp. 422–425.

(b) The several arguments of the Plan and its *amici*—(1) that allowing a withdrawing employer to avoid interest during the withdrawal year works against the statute's basic objective of requiring the employer to pay a fair share of the plan's underfunding; (2) that the statute's language actually favors calculating interest from the last day of the plan year before withdrawal; and (3) that the legislative history demonstrates that Congress expressly rejected the idea of a "funding gap" between the valuation date at the end of the plan year before withdrawal and the beginning of the year following withdrawal—are not persuasive. Pp. 425–430.

3 F. 3d 994, affirmed.

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

Michael G. Bruton argued the cause for petitioner. With him on the briefs were *Neil K. Quinn*, *Robert Marc Chemers*, and *Mary Anne H. Capron.*

Richard K. Willard argued the cause for respondents. With him on the brief were *Sara E. Hauptfuehrer*, *James W. Greer*, and *David C. Hertel.**

JUSTICE BREYER delivered the opinion of the Court.

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 94 Stat. 1208, 29 U. S. C. §§ 1381–1461, provides that an employer who withdraws from an underfunded multiemployer pension plan must pay a charge sufficient to cover that employer's fair share of the plan's unfunded liabilities. The statute permits the employer to pay that charge in lump

*Briefs of *amici curiae* urging reversal were filed for the Central States Southeast and Southwest Areas Pension Fund by *Thomas C. Nyhan* and *Terence G. Craig;* and for the National Coordinating Committee for Multiemployer Plans by *K. Peter Schmidt* and *Philip W. Horton.*

sum or to "amortize" it, making payments over time. This case focuses upon a withdrawing employer who amortizes the charge, and it asks when, for purposes of calculating the amortization schedule, interest begins to accrue on the amortized charge. The Court of Appeals for the Seventh Circuit held that, for purposes of computation, interest begins to accrue on the first day of the year after withdrawal. We agree and affirm its judgment.

I

We shall briefly describe the general purpose of MPPAA, the basic way MPPAA works, and the relevant interest-related facts of the case before us.

A

MPPAA's General Purpose

MPPAA helps solve a problem that became apparent after Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, 29 U. S. C. § 1001 *et seq.* ERISA helped assure private-sector workers that they would receive the pensions that their employers had promised them. See, *e. g.*, *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 605–609 (1993). To do so, among other things, ERISA required employers to make contributions that would produce pension plan assets sufficient to meet future vested pension liabilities; it mandated termination insurance to protect workers against a plan's bankruptcy; and, if a plan became insolvent, it held any employer who had withdrawn from the plan during the previous five years liable for a fair share of the plan's underfunding. See 26 U. S. C. § 412 (minimum funding standards); 29 U. S. C. § 1082 (same); 29 U. S. C. § 1301 *et seq.* (termination insurance); 29 U. S. C. § 1364 (withdrawal liability).

Unfortunately, this scheme encouraged an employer to withdraw from a financially shaky plan and risk paying its share if the plan later became insolvent, rather than to re-

main and (if others withdrew) risk having to bear alone the entire cost of keeping the shaky plan afloat. Consequently, a plan's financial troubles could trigger a stampede for the exit doors, thereby ensuring the plan's demise. See *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U. S. 211, 216 (1986); *Pension Benefit Guaranty Corporation* v. *R. A. Gray & Co.*, 467 U. S. 717, 722–723, n. 2 (1984); see also 29 U. S. C. § 1001a(a)(4); H. R. Rep. No. 96–869, pt. 1, pp. 54–55 (1980); D. McGill & D. Grubbs, Fundamentals of Private Pensions 618–619 (6th ed. 1989). MPPAA helped eliminate this problem by changing the strategic considerations. It transformed what was only a risk (that a withdrawing employer would have to pay a fair share of underfunding) into a certainty. That is to say, it imposed a withdrawal charge on all employers withdrawing from an underfunded plan (whether or not the plan later became insolvent). And, it set forth a detailed set of rules for determining, and collecting, that charge.

B

MPPAA's Basic Approach

The way in which MPPAA calculates interest is related to the way in which that statute answers three more general, and more important, questions: *First*, how much is the withdrawal charge? MPPAA's lengthy charge-determination section, § 1391, sets forth rules for calculating a withdrawing employer's fair share of a plan's underfunding. See 29 U. S. C. § 1391. It explains (a) how to determine a plan's total underfunding; and (b) how to determine an employer's fair share (based primarily upon the comparative number of that employer's covered workers in each earlier year and the related level of that employer's contributions).

One might expect § 1391 to calculate a withdrawal charge that equals the withdrawing employer's fair share of a plan's underfunding *as of the day the employer withdraws.* But, instead, § 1391 instructs a plan to make the withdrawal

charge calculation, not as of the day of withdrawal, but *as of the last day of the plan year preceding the year during which the employer withdrew*—a day that could be up to a year earlier. See §§ 1391(b)(2)(A)(ii), (b)(2)(E)(i), (c)(2)(C)(i), (c)(3)(A), and (c)(4)(A). Thus (assuming for illustrative purposes that a plan's bookkeeping year and the calendar year coincide), the withdrawal charge for an employer withdrawing from an underfunded plan in 1981 equals that employer's fair share of the underfunding as calculated on December 31, 1980, whether the employer withdrew the next day (January 1, 1981) or a year later (December 31, 1981). The reason for this calculation date seems one of administrative convenience. Its use permits a plan to base the highly complex calculations upon figures that it must prepare in any event for a report required under ERISA, see 29 U. S. C. § 1082(c)(9), thereby avoiding the need to generate new figures tied to the date of actual withdrawal.

Second, how may the employer pay the withdrawal charge? The statute sets forth two methods: (a) payment in a lump sum; and (b) payment in installments. The statute's lump-sum method is relatively simple. A withdrawing employer may pay the entire liability when the first payment falls due; pay installments for a while and then discharge its remaining liability; or make a partial balloon payment and afterwards pay installments. See 29 U. S. C. § 1399(c)(4). The statute's installment method is more complex. The statutory method is unusual in that the statute does not ask the question that a mortgage borrower would normally ask, namely, what is the amount of each of my monthly payments? What size monthly payment will amortize, say, a 7% 30-year loan of $100,000? Rather, the statute fixes the amount of each payment and asks how many such payments there will have to be. To put the matter more precisely, (1) the statute fixes the amount of each annual payment at a level that (roughly speaking) equals the withdrawing employer's typical contribution in earlier years; (2) it sets an interest rate,

equal to the rate the plan normally uses for its calculations; and (3) it then asks how many such annual payments it will take to "amortize" the withdrawal charge at that interest rate. 29 U. S. C. §§ 1399(c)(1)(A)(i), (c)(1)(A)(ii), (c)(1)(C).

It is as if Brown, who owes Smith $1,000, were to ask, not, "How much must I pay each month to pay off the debt (with 7% interest) over two years?"—but, rather, "Assuming 7% interest, how many $100 monthly payments must I make to pay off that debt?" To bring the facts closer to those of this case, assume that an employer withdraws from an underfunded plan in mid-1981; that the withdrawal charge (calculated as of the end of 1980) is $23.3 million; that the employer normally contributes about $4 million per year to the plan; and that the plan uses a 7% interest rate. In that case, the statute asks: "How many annual payments of about $4 million does it take to pay off a debt of $23.3 million if the interest rate is 7%?" The fact that the statute poses the installment-plan question in this way, along with an additional feature of the statute, namely, that the statute forgives all debt outstanding after 20 years, 29 U. S. C. § 1399(c)(1)(B), suggests that maintaining level funding for the plan is an important goal of the statute. The practical effect of this concern with maintaining level payments is that any amortization interest § 1399(c)(1)(A)(i) may cause to accrue is added to the end of the payment schedule (unless forgiven by § 1399(c)(1)(B)).

Third, when must the employer pay? The statute could not make the employer pay the calculated sum (or begin to pay that sum) on the date in reference to which one calculates the withdrawal charge, for that date occurs before the employer withdraws. (It is the last day of the preceding plan year, *i. e.*, December 31, 1980, for an employer who withdraws in 1981.) The statute, of course, might make the withdrawing employer pay (or begin payment) on the date the employer actually withdraws. But, it does not do so. Rather, the statute says that a plan must draw up a schedule

for payment and "demand payment" as "soon as practicable" after withdrawal. 29 U. S. C. § 1399(b)(1). It adds that "[w]ithdrawal liability shall be payable . . . no more than 60 days after the date of the demand." § 1399(c)(2).

Thus, a plan that calculates quickly might demand payment the day after withdrawal and make the charge "payable" within 60 days thereafter. A plan that calculates slowly might not be able to demand payment for many months after withdrawal. For example, in the case of the employer who withdraws on August 14, 1981, incurring a withdrawal charge of $23.3 million (calculated as of December 31, 1980), the lump sum of $23.3 million, or the first of the installment payments of roughly $4 million, will become "payable" to the plan "no later than 60 days" after the plan sent the withdrawing employer a demand letter. The day of the first payment may thus come as soon as within 60 days after August 15, 1981, or it may not come for many months thereafter, depending upon the plan's calculating speed.

C

This Case

The facts of this case approximate those of our example. Three brewers, Schlitz, Pabst, and Miller, contributed for many years to a multiemployer pension plan (Plan). On August 14, 1981, Schlitz withdrew from the Plan. See App. 151–152. By the end of September 1981, the Plan completed its calculations, created a payment schedule, and sent out a demand for payment (thereby making the first installment payment "payable") "on or before November 1, 1981." *Id.*, at 153, 154. From the outset, the parties agreed that the annual installment payment amounted to $3,945,481, and that the relevant interest rate was 7% per year. After various controversies led to arbitration and a court proceeding between Schlitz and the Plan, the courts and parties eventually determined that the withdrawal charge (calculated as of the

last day of the previous plan-bookkeeping year, December 31, 1980) amounted to $23.3 million.

But the parties disagreed whether interest accrued during 1981, the year in which Schlitz withdrew. The Plan claimed that, for purposes of calculating the installment schedule, interest started accruing on the last day of the plan year preceding withdrawal (December 31, 1980). Schlitz, on the other hand, argued that accrual began on the first day of the plan year following withdrawal (January 1, 1982). Under either reading, the number of annual payments is eight. But, under the Plan's reading, the final payment would amount to $3,499,361, whereas, in Schlitz's reading, that payment would amount to $880,331.

The arbitrator in this case agreed with Schlitz's reading. See 9 EBC 2385, 2405 (1988). The District Court, reviewing the arbitration award, disagreed, No. 88–C–908 (ED Wis., June 6, 1991), reprinted in App. 25, 62–69, but the Court of Appeals for the Seventh Circuit reversed the District Court, 3 F. 3d 994 (1993). Because the Seventh Circuit's decision conflicts with a holding of the Third Circuit, *Huber* v. *Casablanca Industries, Inc.*, 916 F. 2d 85, 95–100 (1990), cert. dism'd, 506 U. S. 1088 (1993), this Court granted certiorari, 512 U. S. 1234 (1994). Our conclusion, like that of the Seventh Circuit, is that, for purposes of computation, interest does not start accruing until the beginning of the plan year after withdrawal.

II

At first glance, the statutory provision that (the parties agree) governs this case seems silent on the issue of withdrawal-year interest. Indeed, it does not mention interest directly at all. Rather, it says that a withdrawing employer

> "shall pay the amount determined under section 1391 . . . over the period of years necessary *to amortize the amount* in level annual payments determined under sub-

> paragraph (C), *calculated as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs* and as if each subsequent payment were made on the first day of each subsequent plan year." 29 U. S. C. § 1399(c)(1)(A)(i) (emphasis added).

After considering the parties' arguments, which focus upon the emphasized language, we have become convinced that, for purposes of computation, this provision, although causing interest to accrue over subsequent plan years, does not cause interest to accrue during the withdrawal year itself.

A

The Plan points out, and we agree, that the word "amortize" normally assumes interest charges. After all, the very idea of amortizing, say, a mortgage loan, involves paying the principal of the debt over time along with interest. But the Plan (supported by the Government, which is taking a view of the matter contrary to the view the Pension Benefit Guaranty Corporation took in the *Huber* case, see 916 F. 2d, at 96) goes on to claim that the word "amortize" indicates that interest accrues during the withdrawal year as well as during subsequent years. We do not agree with that claim. In our view, one generally does not pay interest on a debt until that debt arises—that is to say, until the principal of the debt is outstanding. And the instruction to calculate payment as if the first payment were made at the beginning of the following year tells us to treat the debt as if it arose at that time (*i. e.*, the first day of the year after withdrawal), not as if it arose one year earlier.

For one thing, unless a loan is involved, one normally expects a debtor to make a first payment at the time the debt arises, not one payment cycle later. Suppose, for example, that a taxpayer arranges to pay a large tax debt in four quarterly installments. Would one not expect the taxpayer to make the first payment on April 15, the day the tax debt

becomes due? Similarly, would one not expect a buyer of, say, a business to make the first payment (a down payment) at the time of the closing? By way of contrast, when a loan is involved (say, when one borrows money on a home mortgage and repays it in installments), interest accrual normally does begin before the first payment. That is because the borrower has had the use of the money for one cycle before the first payment. In the case of a loan, it would seem pointless, and would simply generate an unnecessary back-and-forth transfer of money, for a first repayment to take place on the very day the lender disburses the loan proceeds.

The "first payment" at issue here, however, looks more like a tax or purchase-money installment than a loan installment. Under the statute, the withdrawing employer's debt does not arise at the end of the year preceding the year of withdrawal. In fact, the employer may not have withdrawn from the plan at the beginning of the year, but instead may have continued to make its ordinary contribution until well into the year. In any event, the statute makes clear that the withdrawing employer owes nothing until its plan demands payment, which will inevitably happen some time after the beginning of the year. See 29 U. S. C. §§ 1399(b)(1), (c)(2). In fact, the withdrawing employer cannot determine, or pay, the amount of its debt until the plan has calculated that amount—which must take place some time after the beginning of the withdrawal year. All these features make it difficult to find any analogy in withdrawal liability to a loan.

For another thing, we cannot easily reconcile the Plan's reading of the statute with the statutory provision that permits an employer to pay the amount owed in a lump sum. That provision says that a withdrawing employer

> "shall be entitled to prepay the outstanding amount of the unpaid annual withdrawal liability payments determined under [§ 1399(c)(1)(C)], plus accrued interest, if any, in whole or in part, without penalty." § 1399(c)(4).

We read this provision to permit an employer, by paying a lump sum, to avoid paying the amortization interest that § 1399(c)(1)(A)(i) would otherwise cause to accrue. (Under any other reading, the prepayment provision would not create much of an "entitle[ment]." Moreover, the prepayment provision refers to "payments determined under [§ 1399(c)(1)(*C*)]"—not § 1399(c)(1)(*A*), the provision that causes amortization interest to accrue.) It would seem odd if the prepayment provision enabled an employer to avoid all interest except the interest accruing during the year of withdrawal. And, if interest accrued from the last day of the year before withdrawal, there would hardly ever be a time that no interest was due. Such a reading would thus make it very difficult to give meaning to the words "if any" in the phrase "plus accrued interest, if any." (The Third Circuit suggested that these words might refer to a lump-sum payment made immediately after a scheduled installment. See *Huber*, 916 F. 2d, at 99. We agree that they could, theoretically. But, realistically speaking, it seems unlikely that Congress inserted "if any" to deal with such an unusual event.)

Further, the interpretation under which interest would accrue from the last day of the year before withdrawal is difficult to reconcile with the statutory language that defines a withdrawing employer's basic liability. Section 1381(a) says that the withdrawing employer becomes "liable to the plan in the amount determined under this part to be the withdrawal liability." Section 1381(b)(1) defines "withdrawal liability" as "the amount determined under section 1391." Yet, § 1391 says nothing about a year's worth of interest. Why then read the provision here at issue so that it inevitably and always creates liability in the amount of the withdrawal charge *plus one year's interest*, irrespective of when the employer, in fact, withdraws and how or when the employee begins to pay?

Finally, the provision here at issue asks one to calculate the installment payments as if the "first payment" was made,

not on the *last day* of the withdrawal year, but on the "*first day*" of the next year, *i. e.*, one year *plus one day* after the withdrawal charge calculation date. This choice of time (a year and a day) would be an odd way to signal that one is to treat the first payment as if it occurred at the *end* of a cycle.

B

The Plan (and supporting *amici*) make several arguments in support of a reading in which, for purposes of calculation, interest starts accruing on the last day of the year before withdrawal. But we are not persuaded.

First, the Plan argues that our interpretation works against the basic objective of the statute, requiring a withdrawing employer to pay a fair share of the underfunding. Under our interpretation, says the Plan, the withdrawing employer will fail to pay a year's worth of interest on the withdrawal charge, thereby requiring the remaining employers to make up what, in fact, was part of the withdrawing employer's fair share. Suppose, for example, that an underfunded plan needed exactly $20 million as of the end of 1980 to create a sum that would grow to just the amount needed to pay then-vested benefits falling due, say, in 1999. By the end of 1981 that same plan would need more money; indeed, if we assume the $20 million would have grown 7% each year, it would need 7% more to pay those same vested 1999 benefits. Thus, if the withdrawing employer's fair share of the $20 million is $3 million as of the end of 1980, its fair share must have grown to $3,210,000 by the end of 1981. Why, asks the Plan, should the remaining employers have to make up for this missing $210,000?

One answer to the Plan's question is that the $210,000 will not necessarily be missing. For one thing, until the employer withdraws, it will be required to make contributions that should contain a component designed to reduce underfunding. See 26 U. S. C. § 412(b)(2); 29 U. S. C. § 1082. For another thing, if a plan moves quickly, it may be able to force

a withdrawing employer to begin making installment payments even before the end of the withdrawal year. Either way, to charge such an employer a full year's worth of interest would overcharge that employer and thereby provide the remaining employers with a kind of underfunding-reduction windfall.

Another answer is that we are not convinced that MPPAA aims to make withdrawing employers pay an actuarially perfect fair share, namely, a set of payments in amounts that, when invested, would theoretically produce (on the plan's actuarial assumptions) a sum precisely sufficient to pay (the employer's proportional share of) a plan's estimated vested future benefits. For one thing, the statute forgives *de minimis* amounts. See 29 U. S. C. § 1389. For another thing, it forgives all annual installment payments after 20 years, see § 1399(c)(1)(B)—and that means that, if an employer's normal annual contribution was low compared to the withdrawal charge, the presence or absence of withdrawal-year interest (which shows up at the end of the payment schedule, see *supra*, at 419) will make no difference (for the last payments will never be made). Finally, in making the first installment "payable" only after a plan demands it, MPPAA contemplates that an employer sometimes may pay its actual first installment long after the withdrawal year—as was the case in *Huber*, *supra*, at 88 (2½-year delay)—in which case no interpretation of the statute can avoid an employer's actually paying something less than its fair share of interest.

Second, the Plan argues that the statute's language favors its interpretation. It refers to a dictionary that defines an amortization plan as "'one where there are partial payments of the principal, *and accrued interest*, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished,'" Brief for Petitioner 27 (quoting Black's Law Dictionary 76 (5th ed. 1979)) (emphasis added), and to another definition that says that, "'[i]f a loan is being repaid by the amortization method, *each payment*

is partially repayment of principal and partially payment of interest,'" Brief for Petitioner 27 (quoting S. Kellison, The Theory of Interest 169 (2d ed. 1991)) (emphasis added). These definitions accurately describe the repayment of loans. But, they do not seem to focus upon whether or not one would normally include interest in the first installment of an amortized payment of a debt that is not a loan. We have no reason to believe they intend to define away the issue before us here.

The Plan adds that our reading of the statute makes the first "as if" clause in § 1399(c)(1)(A)(i) superfluous because, "if Congress had not intended to include interest in the first payment, it could have simply provided that the presumed payment schedule should be calculated as if payments were made annually." Brief for Petitioner 38. It seems to us that the premise of this argument is that, without contrary indication, one would expect that, in the case of an indebtedness of the kind here at issue, interest would not start accruing before the first payment is due—a premise with which we agree, see *supra*, at 422–423. More importantly, had Congress not used the words "as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs," the reader might have thought that interest would begin to accrue immediately upon withdrawal, a reading that has some intuitive appeal, see 3 F. 3d, at 1004 ("An assessment of interest between the date of withdrawal and the date on which payments begin . . . would not be troubling"). But, the first "as if" clause makes clear that interest does not begin accruing on that date. (The same concern may explain the second "as if" clause in § 1399(c)(1)(A)(i), concerning subsequent payments. Without that clause, one might think that one should calculate the amortization schedule as if the first payment is made out of order, and as if each successive payment is made on the anniversary of the date of withdrawal.)

We recognize that Congress might have been more specific. For example, it could have said: "Calculate amortization as if the first payment is made on the date the employer's withdrawal liability is due" (had it intended interest to start accruing on that date); or: "Calculate amortization as if each payment is made on the last day of the year at the beginning of which it is due" (had it intended interest to start accruing one cycle before the first payment is due). Instead, Congress said that one should calculate amortization "as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs." And, that actual language, as we have said, offers more support for our interpretation than for the alternative. Were we to read the actual language as does the Plan, we would have to analogize the valuation date (the last day of the year preceding withdrawal) to the date on which liability arises; to the date on which the debt becomes "payable"; or to the date on which the employer withdraws. But, in fact, the calculation date is none of those things; it is a date chosen simply for ease of administration; and ease of administration does *not* require choosing the same date for interest-accrual purposes. See 3 F. 3d, at 1004 ("Establishing a simple rule for calculating funding shortfalls has nothing to do with interest").

Third, the Plan points to legislative history. The Plan says that the original bill provided that interest would not begin accruing until the date of withdrawal. And, the Plan points out, just like the version that ultimately became law, the bill located the valuation date (the date as of which the withdrawing employer's share in the plan's underfunding is determined) at the end of the plan year before withdrawal. Thus, the Plan says, the original bill contemplated a "funding gap"—from the valuation date to the withdrawal date. Because the section providing that interest started accruing on the withdrawal date did not make it into the statute as en-

acted, the Plan argues, Congress expressly rejected the idea of a "gap." Brief for Petitioner 41.

For the reasons stated above, see *supra*, at 426–427, we doubt that our reading, as a practical matter, will cause a significant gap to occur. But, regardless, if we were to consider legislative history in this case, we would find that it undermines, rather than supports, the Plan's reading. The Plan's rendering is incomplete, for the relevant statutory provisions went through not two but four versions:

(1) the original bill, calling for a valuation on the last day of the year before withdrawal and for interest accrual beginning on the date of withdrawal,

see S. 1076, 96th Cong., 1st Sess., § 104 (1979) (adding ERISA §§ 4201(d)(1)(A), (e)(5)), reprinted in 125 Cong. Rec. 9800, 9803 (1979); H. R. 3904, 96th Cong., 1st Sess., § 104 (1979) (adding ERISA §§ 4201(d)(1)(A), (e)(5)), reprinted in Hearings on the Multiemployer Pension Plan Amendments Act of 1979 before the Task Force on Welfare and Pension Plans of the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor, 96th Cong., 1st Sess., pp. 3, 21, 25 (1979) (hereinafter Task Force Hearings);

(2) a second version, which moved the valuation date to the end of the withdrawal year and also said that interest shall be determined "as if each payment were made at the end of the year in which it is due" (thus apparently indicating that interest would start accruing one year before the first payment fell due),

see H. R. 3904, *supra*, § 104 (adding ERISA §§ 4201(e)(2)(E), (f)(2)(C), (f)(3)(A), (f)(4)(A), (i)(2)(A)(ii)), reprinted in Task Force Hearings 246–247, 249, 251, 252, 256;

(3) a third version, which kept the valuation date at the end of the withdrawal year but changed the interest-

accrual language to the "as if" clauses found in the statute as we now know it,

see H. R. 3904, 96th Cong., 1st Sess., § 104 (1980) (adding ERISA §§ 4201(e)(2)(E)(i), (f)(2)(C)(i), (f)(3)(A), (f)(4)(A), (i)(2)(A)(i)), reprinted in H. R. Rep. No. 96–869, pt. 1, pp. 12–15 (1980); H. R. 3904, 96th Cong., 1st Sess., § 104 (1980) (adding ERISA §§ 4201(e)(2)(E)(i), (f)(2)(C)(i), (f)(3)(A), (f)(4)(A), 4202(c)(1)(A)(i)), reprinted in H. R. Rep. No. 96–869, pt. 2, pp. 129–131, 135–136 (1980); and

(4) a final version, which moved the valuation date back to the end of the year preceding withdrawal but retained the third version's interest-accrual language,

see H. R. 3904, 96th Cong., 1st Sess., § 104 (1980) (adding ERISA §§ 4211(b)(2)(E)(i), (c)(2)(C)(i)(I), (c)(3)(A), (c)(4)(A)(i), 4219(c)(1)(A)(i)), reprinted in 126 Cong. Rec. 23003, 23014, 23016 (1980).

This history suggests two things, neither of which helps the Plan. *First*, throughout the bill's history, the valuation date and interest-accrual date moved about in an apparently uncoordinated way. This somewhat undermines the Plan's suggestion that Congress was very concerned about the interplay between the two. It certainly dispels the notion that the final version should primarily be viewed as a rejection of the "funding gap" found in the original bill. *Second*, the evolution of the "as if" clause from "as if each payment were made at the end of the year in which it is due" to "as if the payment were made on the first day of the plan year [following withdrawal]" suggests that Congress replaced a scheme in which interest starts accruing a full payment cycle before the first payment with a scheme in which interest starts accruing on the first day of the year following withdrawal.

III

We consequently hold that MPPAA calculates its installment schedule on the assumption that interest begins accruing on the first day of the year following withdrawal. The judgment of the Court of Appeals is therefore

Affirmed.

Syllabus

O'NEAL *v.* McANINCH, WARDEN

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

No. 93–7407. Argued October 31, 1994—Decided February 21, 1995

In proceedings on Robert O'Neal's federal habeas corpus petition challenging his state-court convictions for murder and other crimes, the Sixth Circuit assumed that O'Neal had established constitutional "trial" error with regard to one of the jury instructions, but disregarded that error on the ground that it was "harmless." After setting forth the harmlessness standard normally used by federal habeas courts—whether the error had a "substantial and injurious effect or influence in determining the jury's verdict," see, *e. g.*, *Brecht* v. *Abrahamson*, 507 U. S. 619, 627—the Sixth Circuit stated that the habeas petitioner must bear the "burden of establishing" whether the error was prejudicial under that standard. As a practical matter, the court's burden-of-proof statement apparently means that the petitioner must lose if a reviewing judge is in grave doubt about the effect on the jury of this kind of error, *i. e.*, if, in the judge's mind, the matter is so evenly balanced that he or she feels in virtual equipoise as to the error's harmlessness.

Held: When a federal habeas court finds a constitutional trial error and is in grave doubt about whether the error had a "substantial and injurious effect or influence in determining the jury's verdict," the error is not harmless, and the petitioner must win. Pp. 436–445.

(a) The foregoing legal conclusion rests upon three considerations. First, it is supported by precedent. See, *e. g.*, *Kotteakos* v. *United States*, 328 U. S. 750, 764–765; *Chapman* v. *California*, 386 U. S. 18, 24. *Brecht*, *supra*, at 637, and *Palmer* v. *Hoffman*, 318 U. S. 109, 116, distinguished. The State's view that appellants' "burden" of showing "prejudice" in civil cases applies to habeas proceedings fails to take into account the stakes involved in a habeas proceeding. Unlike the civil cases cited by the State, the errors being considered by a habeas court occurred in a *criminal* proceeding, and therefore, although habeas is a civil proceeding, someone's custody, rather than mere civil liability, is at stake. Moreover, precedent suggests that civil and criminal harmless-error standards do not differ in their treatment of grave doubt as to the harmlessness of errors affecting substantial rights. Compare, *e. g.*, Fed. Rule Crim. Proc. 52(a) with Fed. Rule Civ. Proc. 61. Second, the Court's conclusion is consistent with the basic purposes underlying the writ of habeas corpus. A legal rule requiring issuance of the writ will,

Syllabus

at least often, avoid the grievous wrong of holding a person in custody in violation of the Constitution and will thereby both protect individuals from unconstitutional convictions and help to guarantee the integrity of the criminal process by assuring that trials are fundamentally fair. In contrast, although denying the writ in cases of grave uncertainty would help protect the State's interest in the finality of its judgments and would promote federal-state comity, such a rule would also virtually guarantee that many, in fact, would be wrongly imprisoned or executed, and would tell judges who believe individuals are quite possibly being held in unlawful custody that they cannot grant relief. Third, the rule adopted herein has certain administrative virtues: It is consistent with the way that courts have long treated important trial errors and avoids the need for judges to read lengthy records to determine prejudice in every habeas case. These factors are not determinative, but offer a practical caution against a rule that, in respect to precedent and purpose, would run against the judicial grain. Pp. 437–444.

(b) Contrary to the State's argument, there is nothing in the language of the habeas corpus statute, 28 U. S. C. § 2254(a), that tells a court to treat a violation as harmless when it is in grave doubt about harmlessness. Indeed, there is no significant support for either side in any of the language of the relevant statutes or Rules. In these circumstances, the Court properly undertakes the foregoing examination, looking first to the considerations underlying its habeas jurisprudence, and then determining whether the proposed rule will advance or inhibit these considerations by weighing the marginal costs and benefits of its application on collateral review. See *Brecht*, *supra*, at 633. Pp. 444–445.

3 F. 3d 143, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined, *post*, p. 445.

Thomas R. Wetterer, Jr., by appointment of the Court, 511 U. S. 1067, argued the cause for petitioner. With him on the briefs were *Gloria Eyerly*, *Gregory L. Ayers*, and *John A. Bay*.

Richard A. Cordray, State Solicitor of Ohio, argued the cause for respondent. With him on the briefs were *Lee Fisher*, Attorney General, *Simon B. Karas*, and *Stuart A. Cole* and *Timothy J. Mangan*, Assistant Attorneys General.

James A. Feldman argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Harris*, and *Deputy Solicitor General Wallace*.*

JUSTICE BREYER delivered the opinion of the Court.

Reviewing courts normally disregard trial errors that are harmless. This case asks us to decide whether a federal ha-

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Larry W. Yackle*, *Steven R. Shapiro*, and *James S. Liebman*; and for Timothy Scott Sherman by *Andrew L. Frey*, *Roy T. Englert, Jr.*, *James G. Duncan*, and *Stuart J. Robinson*.

A brief of *amici curiae* urging affirmance was filed for the State of Maryland et al. by *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Tarra DeShields-Minnis*, Assistant Attorney General, and *Eleni M. Constantine*, and by the Attorneys General for their respective jurisdictions as follows: *James H. Evans* of Alabama, *Bruce M. Botelho* of Alaska, *Grant Woods* of Arizona, *Winston Bryant* of Arkansas, *Daniel E. Lungren* of California, *Gale H. Norton* of Colorado, *John M. Bailey* of Connecticut, *Charles Oberly* of Delaware, *Robert A. Butterworth* of Florida, *Michael J. Bowers* of Georgia, *Robert A. Marks* of Hawaii, *Larry EchoHawk* of Idaho, *Roland W. Burris* of Illinois, *Pamela Carter* of Indiana, *Bonnie J. Campbell* of Iowa, *Robert T. Stephan* of Kansas, *Chris Gorman* of Kentucky, *Richard P. Ieyoub* of Louisiana, *Michael E. Carpenter* of Maine, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Jeremiah (Jay) Nixon* of Missouri, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Jeffrey R. Howard* of New Hampshire, *Deborah T. Poritz* of New Jersey, *Tom Udall* of New Mexico, *G. Oliver Koppel* of New York, *Michael F. Easley* of North Carolina, *Susan B. Loving* of Oklahoma, *Theodore R. Kulongoski* of Oregon, *Ernest D. Preate, Jr.*, of Pennsylvania, *Pedro R. Pierluisi* of Puerto Rico, *Jeffrey B. Pine* of Rhode Island, *T. Travis Medlock* of South Carolina, *Mark Barnett* of South Dakota, *Charles Burson* of Tennessee, *Dan Morales* of Texas, *Jan Graham* of Utah, *Jeffrey L. Amestoy* of Vermont, *Rosalie Simmonds Ballentine* of the Virgin Islands, *James S. Gilmore III* of Virginia, *Christine O. Gregoire* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *James E. Doyle* of Wisconsin, and *Joseph B. Meyer* of Wyoming.

Lawrence J. Fleming and *Harry R. Reinhart* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae*.

beas court should consider a trial error harmless when the court (1) reviews a state-court judgment from a criminal trial, (2) finds a constitutional error, and (3) is in *grave doubt* about whether or not that error is harmless. We recognize that this last mentioned circumstance, "grave doubt," is unusual. Normally a record review will permit a judge to make up his or her mind about the matter. And indeed a judge has an obligation to do so. But we consider here the legal rule that governs the special circumstance in which record review leaves the conscientious judge in grave doubt about the likely effect of an error on the jury's verdict. (By "grave doubt" we mean that, in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error.) We conclude that the uncertain judge should treat the error, not as if it were harmless, but as if it affected the verdict (*i. e.*, as if it had a "substantial and injurious effect or influence in determining the jury's verdict").

I

Robert O'Neal filed a federal habeas corpus petition challenging his state-court convictions for murder and other crimes. The Federal District Court agreed with several of his claims of constitutional trial error. On appeal the Sixth Circuit disagreed with the District Court, with one important exception. That exception focused on possible jury "confusion" arising out of a trial court instruction about the state of mind necessary for conviction combined with a related statement by a prosecutor. The Sixth Circuit assumed, for argument's sake, that the instruction (taken together with the prosecutor's statement) had indeed violated the Federal Constitution by misleading the jury. Nonetheless, the court disregarded the error on the ground that it was "harmless." *O'Neal* v. *Morris*, 3 F. 3d 143, 147 (1993).

The court's opinion sets forth the standard normally applied by a federal habeas court in deciding whether or not this kind of constitutional "trial" error is harmless, namely,

whether the error "'"had substantial and injurious effect or influence in determining the jury's verdict."'" *Id.*, at 145 (quoting *Brecht* v. *Abrahamson*, 507 U. S. 619, 627 (1993) (quoting, and adopting, standard set forth in *Kotteakos* v. *United States*, 328 U. S. 750, 776 (1946))). But, rather than ask directly whether the record's facts satisfied this standard, the court seemed to refer to a burden of proof. Its opinion says that the habeas petitioner must bear the "burden of establishing" whether the error was prejudicial. 3 F. 3d, at 145. As a practical matter, this statement apparently means that, if a judge is in grave doubt about the effect on the jury of this kind of error, the petitioner must lose. Thus, O'Neal might have lost in the Court of Appeals, not because the judges concluded that the error *was* harmless, but because the record of the trial left them in grave doubt about the effect of the error.

This Court granted certiorari to decide what the law requires in such circumstances. We repeat our conclusion: When a federal judge in a habeas proceeding is in grave doubt about whether a trial error of federal law had "substantial and injurious effect or influence in determining the jury's verdict," that error is not harmless. And, the petitioner must win.

II

As an initial matter, we note that we deliberately phrase the issue in this case in terms of a judge's grave doubt, instead of in terms of "burden of proof." The case before us does not involve a judge who shifts a "burden" to help control the presentation of evidence at a trial, but rather involves a judge who applies a legal standard (harmlessness) to a record that the presentation of evidence is no longer likely to affect. In such a case, we think it conceptually clearer for the judge to ask directly, "Do I, the judge, think that the error substantially influenced the jury's decision?" than for the judge to try to put the same question in terms

of proof burdens (*e. g.*, "Do I believe the party has borne its burden of showing . . . ?"). As Chief Justice Traynor said:

> "Whether or not counsel are helpful, it is still the responsibility of the . . . court, once it concludes there was error, to determine whether the error affected the judgment. It must do so without benefit of such aids as presumptions or allocated burdens of proof that expedite fact-finding at the trial." R. Traynor, The Riddle of Harmless Error 26 (1970) (hereinafter Traynor).

The case may sometimes arise, however, where the record is so evenly balanced that a conscientious judge is in grave doubt as to the harmlessness of an error. See *id.*, at 22–23. This is the narrow circumstance we address here.

III

Our legal conclusion—that in cases of grave doubt as to harmlessness the petitioner must win—rests upon three considerations. First, precedent supports our conclusion. As this Court has stated, "the original common-law harmless-error rule put the burden on the beneficiary of the error [here, the State] . . . to prove that there was no injury . . . ." *Chapman* v. *California*, 386 U. S. 18, 24 (1967) (citing 1 J. Wigmore, Evidence § 21 (3d ed. 1940)). When this Court considered the doubt-as-to-harmlessness question in the context of direct review of a *non*constitutional trial error, it applied the same rule. In *Kotteakos* v. *United States*, the Court wrote:

> "If, when all is said and done, the [court's] conviction is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand . . . . But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to

> conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, *or if one is left in grave doubt*, the conviction cannot stand." 328 U. S., at 764–765 (emphasis added).

Id., at 776 (holding that error is not harmless if it had "substantial and injurious effect or influence" upon the jury). That is to say, if a judge has "grave doubt" about whether an error affected a jury in this way, the judge must treat the error as if it did so. See also *United States* v. *Olano*, 507 U. S. 725, 741 (1993) (stating that under Federal Rule of Criminal Procedure 52(a) the Government bears the "burden of showing the absence of prejudice"); *United States* v. *Lane*, 474 U. S. 438, 449 (1986) (quoting *Kotteakos* as providing the proper harmless-error standard in cases of misjoinder and quoting "'grave doubt'" language).

When this Court considered the same question in the context of direct review of a *constitutional* trial error, it applied the same rule. See *Chapman*, 386 U. S., at 24 (holding that error is harmless only if "harmless beyond a reasonable doubt"). Indeed, the *Chapman* Court wrote that "constitutional error . . . casts on someone other than the person prejudiced by it a burden to show that it was harmless." *Ibid.*

We must concede that in *Brecht* v. *Abrahamson* this Court, in the course of holding that the more lenient *Kotteakos* harmless-error standard, rather than the stricter *Chapman* standard, normally governs cases of habeas review of constitutional trial errors, stated that habeas petitioners "are not entitled to habeas relief based on trial error unless *they* can establish that it resulted in 'actual prejudice.'" *Brecht*, 507 U. S., at 637 (emphasis added). This language, however, is not determinative. The issue in *Brecht* involved a choice of substantive harmless-error standards: the stricter *Chapman*, or the less strict *Kotteakos*,

measure of harmlessness. *Both* of those cases had resolved the issue now before us the same way, placing the risk of doubt on the State. Moreover, the sentence from *Brecht* quoted above appears in a paragraph that adopts the very *Kotteakos* standard that we now apply. That paragraph does not explain why the Court would make an exception to the "grave doubt" portion of the *Kotteakos* standard. Furthermore, the *Brecht* opinion, in this respect, did not speak for a Court majority. Four Members of the Court, supporting application of *Chapman*'s standard, dissented. And JUSTICE STEVENS, while a Member of the majority, stated explicitly that the *Kotteakos* standard applied in its *entirety.* 507 U. S., at 640 (concurring opinion) (agreeing, in part, because that standard "places the burden on prosecutors to explain why those errors were harmless").

We further acknowledge that this Court, in *Palmer* v. *Hoffman*, 318 U. S. 109 (1943), said:

> "He who seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Id.*, at 116.

But this pre-*Kotteakos* language, in context, referred to what the preceding sentence in *Palmer* described as "[m]ere 'technical errors.'" 318 U. S., at 116. *Kotteakos* itself makes clear that "technical errors" may be different. It quotes an excerpt from the House Report accompanying the harmless-error statute (then 28 U. S. C. § 391) that says the statute casts

> "'upon the party seeking a new trial the burden of showing that any technical errors that he may complain of have affected his substantial rights.'" *Kotteakos*, 328 U. S., at 760 (quoting H. R. Rep. No. 913, 65th Cong., 3d Sess., 1 (1919)).

The Report, however, (as *Kotteakos* immediately points out) goes on to say that if the error is not "technical," if, instead,

> "'the error is of such a character that its natural effect is to prejudice a litigant's substantial rights, [then] the burden of sustaining a verdict will, notwithstanding this legislation rest upon the one who claims under it.'" H. R. Rep. No. 913, *supra*, at 1.

The "grave doubt" language of *Kotteakos* itself makes clear that important trial errors, including any "constitutional violation, . . . fall in" this last mentioned category, and not "in the 'technical' category" that the House Report described. *Brecht*, *supra*, at 641 (STEVENS, J., concurring); see *Bruno* v. *United States*, 308 U. S. 287, 294 (1939) (Frankfurter, J.) (describing technical errors as those concerned with the "mere etiquette of trials and with the formalities and minutiae of procedure").

We also have examined the precedent upon which the State relies to support its view that appellants bear a "burden" of showing "prejudice" in civil cases. See, *e. g.*, *Erskine* v. *Consolidated Rail Corp.*, 814 F. 2d 266 (CA6 1987); *Flanigan* v. *Burlington Northern Inc.*, 632 F. 2d 880 (CA8 1980); *Creekmore* v. *Crossno*, 259 F. 2d 697 (CA10 1958). The State contends that, because a habeas proceeding, technically speaking, is a civil proceeding, see, *e. g.*, *Browder* v. *Director, Dept. of Corrections of Ill.*, 434 U. S. 257, 269 (1978), this standard applies here. See Fed. Rule Civ. Proc. 61.

One problem with this argument lies in its failure to take into account the stakes involved in a habeas proceeding. Unlike the civil cases cited by the State, the errors being considered by a habeas court occurred in a *criminal* proceeding, and therefore, although habeas is a civil proceeding, someone's custody, rather than mere civil liability, is at stake. And, as we have explained, when reviewing errors from a criminal proceeding, this Court has consistently held that, if the harmlessness of the error is in grave doubt, relief must be granted. We hold the same here.

Moreover, precedent suggests that civil and criminal harmless-error standards do not differ in their treatment of grave doubt as to the harmlessness of errors affecting substantial rights. In *Kotteakos*, the Court interpreted the then-existing harmless-error statute, 28 U. S. C. § 391, now codified with minor change at 28 U. S. C. § 2111. See *Kotteakos*, 328 U. S., at 759 (explaining that the statute "grew out of widespread and deep conviction" that appellate courts had become " 'impregnable citadels of technicality' ") (citation omitted). That statute, by its terms, applied to both civil and criminal cases, and *Kotteakos* made no distinction, at least with respect to the question at issue here, between the two types of cases. See *id.*, at 757, n. 9; 11 C. Wright & A. Miller, Federal Practice and Procedure § 2883, p. 276 (1973) (hereinafter Wright & Miller). Similarly, the current harmless-error statute "traces its lineage" to § 391, and applies in both civil and criminal proceedings. See *McDonough Power Equipment, Inc.* v. *Greenwood*, 464 U. S. 548, 554, n. 4 (1984). And, more important for present purposes, the current harmless-error sections of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (which use nearly identical language) both refer to § 391 as their statutory source. Compare Fed. Rule Crim. Proc. 52(a) (providing that "[a]ny error . . . which does not affect substantial rights shall be disregarded") with Fed. Rule Civ. Proc. 61 (providing that the court "must disregard any error . . . which does not affect the substantial rights of the parties"); see Advisory Committee's Notes on Fed. Rule Crim. Proc. 52(a), 18 U. S. C. App., p. 833 (referring to former § 391 as a source); Advisory Committee's Notes on Fed. Rule Civ. Proc. 61, 28 U. S. C. App., p. 676 (same). In fact, in recent cases, we have interpreted the nearly identical language of Rule 52(a) as treating instances of grave doubt just as we treat them here. See *Olano*, 507 U. S., at 740–741, 743; *Lane*, 474 U. S., at 449 (quoting *Kotteakos*, *supra*, at 765).

For these reasons, even if, for argument's sake, we were to assume that the civil standard for judging harmlessness applies to habeas proceedings (despite the fact that they review errors in state *criminal* trials), it would make no difference with respect to the matter before us. For relevant authority rather clearly indicates that, either way, the courts should treat similarly the matter of "grave doubt" regarding the harmlessness of errors affecting substantial rights, and as *Kotteakos* provides.

Second, our conclusion is consistent with the basic purposes underlying the writ of habeas corpus. As we have said, we are dealing here with an error of constitutional dimension—the sort that risks an unreliable trial outcome and the consequent conviction of an innocent person. See *Brecht*, 507 U. S., at 654 (O'CONNOR, J., dissenting). We also are assuming that the judge's conscientious answer to the question, "But, did that error have a 'substantial and injurious effect or influence' on the jury's decision?" is, "It is extremely difficult to say." In such circumstances, a legal rule requiring issuance of the writ will, at least often, avoid a grievous wrong—holding a person "in custody in violation of the Constitution . . . of the United States." 28 U. S. C. §§ 2241(c)(3), 2254(a). Such a rule thereby both protects individuals from unconstitutional convictions and helps to guarantee the integrity of the criminal process by assuring that trials are fundamentally fair. See Traynor 23 ("In the long run there would be a closer guard against error at the trial, if . . . courts were alert to reverse, in case of doubt, for error that could have contaminated the judgment"). By way of contrast, the *opposite* rule, denying the writ in cases of grave uncertainty, would virtually guarantee that many, *in fact*, will be held in unlawful custody—contrary to the writ's most basic traditions and purposes. And, it would tell judges who believe individuals are *quite possibly* being held "in custody in violation of the Constitution" that they cannot grant relief.

We concede that this opposite rule (denying the writ) would help protect the State's interest in the finality of its judgments and would promote federal-state comity. It would avoid retrials, some of which, held so late in the day, may lead to freedom for some petitioners whose initial convictions were in fact unaffected by the errors that took place at their initial trials. The State's interest in avoiding retrial of this latter category of individuals is legitimate and important. But this interest is somewhat diminished by the legal circumstance that the State normally bears responsibility for the error that infected the initial trial. And, if one assumes (1) that in cases of grave doubt, the error is at least as likely to have been harmful in fact as not, and (2) that retrial will often (or even sometimes) lead to reconviction, then that state interest is further diminished by a factual circumstance: the number of acquittals wrongly caused by grant of the writ and delayed retrial (the most serious harm affecting the State's legitimate interests) will be small when compared with the number of persons whom this opposite rule (denying the writ) would wrongly imprison or execute. On balance, we must doubt that the law of habeas corpus would hold many people in prison "in violation of the Constitution," for fear that otherwise a smaller number, not so held, may eventually go free.

Third, our rule has certain administrative virtues. It is consistent with the way that courts have long treated important trial errors. See, *e. g.*, *Olano*, *supra; Lane*, *supra; Chapman*, 386 U. S., at 24; *Kotteakos*, *supra;* see also 11 Wright & Miller § 2883. In a highly technical area such as this one, consistency brings with it simplicity, a body of existing case law available for consultation, see *Brecht*, *supra*, at 638, and a consequently diminished risk of further, error-produced, proceedings. Moreover, our rule avoids the need for judges to read lengthy records to determine prejudice in every habeas case. These factors are not determinative, but offer a practical caution against a legal rule that, in respect

to precedent and purpose, would run against the judicial grain.

IV

The State makes one additional argument. It points to language in the habeas corpus statute that says the federal courts

> "shall entertain an application for a writ of habeas corpus . . . only on the ground that [a petitioner] is in custody in violation of the Constitution or laws or treaties of the United States." 28 U. S. C. § 2254(a).

See § 2241(c)(3). If a "violation of the Constitution" is harmless, the State adds, then there is no causal connection between "violation" and "custody," and the prisoner is not "in custody in violation of the Constitution." And, by analogy to tort law, the State contends that, because the habeas petitioner is in the position of plaintiff, he must prove this causal connection. Whatever force there may be to this argument is countered by the equally persuasive analogy to affirmative defenses, on which the party in the position of defendant (here the State) bears the risk of equipoise. And, to read the statute as the State suggests would run counter to the principle of *Kotteakos* that when an error's natural effect is to prejudice substantial rights and the court is in grave doubt about the harmlessness of that error, the error must be treated as if it had a "substantial and injurious effect" on the verdict. See *Kotteakos*, 328 U. S., at 764–765, 776.

We do not see what in the language of the statute tells a court that it should treat a violation as harmless when it is in grave doubt about its harmlessness. One might as easily infer the opposite—that the statute leaves the matter of harmlessness as a kind of affirmative defense—from the absence, in the Habeas Corpus Rules' form petition, of any space for a "lack of harmlessness" allegation. See 28 U. S. C. § 2254 Rule 2(c) (providing in part that a habeas petition "shall be in substantially the form annexed to these

rules"). Or, one might as easily infer neutrality on the point from the statute's command that the court dispose of the petition "as law and justice require." 28 U. S. C. § 2243. Ultimately, we find no significant support for either side in any of this language. When faced with such gaps in the habeas statute, we have "look[ed] first to the considerations underlying our habeas jurisprudence, and then determine[d] whether the proposed rule would advance or inhibit these considerations by weighing the marginal costs and benefits of its application on collateral review." *Brecht*, 507 U. S., at 633. We have done that in this case, and for the reasons set forth above, see *supra*, at 442–443, we conclude that, when a habeas court is in grave doubt as to the harmlessness of an error that affects substantial rights, it should grant relief.

V

For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

In my view, a federal habeas court may not upset the results of a criminal trial unless it concludes both that the trial was marred by a violation of the Constitution or a federal statute and that this error was harmful. Because the Court concludes otherwise, I respectfully dissent.

I

Though the majority begins with an examination of precedent construing the federal harmless-error statute, 28 U. S. C. § 2111, the proper place to begin is with the statute governing habeas relief for prisoners in state custody. After all, the petitioner does not seek relief under the harmless-error statute.

Where a state prisoner is concerned, a writ of habeas corpus may issue only when that prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U. S. C. §§ 2241(c)(3), 2254(a). It is not enough that the habeas petitioner is in custody and that some violation of the Constitution or a federal statute occurred at trial; as *amicus curiae* the Solicitor General correctly argues, the statute requires a causal link between the violation and the custody. Quite obviously, a habeas petitioner who proves that a trivial ("harmless") error occurred at trial will not secure habeas relief because such an error could not be said to have been a cause of the custody. Notwithstanding the error, the petitioner would have been in custody lawfully and thus relief is unwarranted. Even the majority implicitly agrees that causation is necessary, for otherwise it would have no need to discuss *harmful* errors as opposed to mere errors.

The habeas petitioner comes to federal court as a plaintiff. Because the plaintiff "seeks to change the present state of affairs," he "naturally should be expected to bear the risk of failure of proof or persuasion." 2 J. Strong, McCormick on Evidence § 337, p. 428 (4th ed. 1992). Part of that burden is the requirement that the plaintiff show that the defendant's actions caused harm. In other areas of the law, the plaintiff almost invariably bears the burden of persuasion with respect to whether the defendant's actions caused harm. See, *e. g.*, *Wards Cove Packing Co.* v. *Atonio*, 490 U. S. 642, 669 (1989) (STEVENS, J., dissenting) ("In the ordinary civil trial, the plaintiff bears the burden of persuading the trier of fact that the defendant has harmed her"); 2 Restatement (Second) of Torts § 433B(1), p. 441 (1965) ("[T]he burden of proof that the tortious conduct of the defendant has caused the harm to the plaintiff is upon the plaintiff"). Establishing causation is thus an essential element of the plaintiff's case in chief. Under the majority's rationale, however, the habeas petitioner need not prove causation at all; once a prisoner

establishes error, the government must affirmatively persuade the court of the harmlessness of that error. *Ante*, at 444. Without explaining why it favors habeas plaintiffs over other plaintiffs, the Court thus treats the question of causation as an affirmative defense.

Requiring the habeas petitioner to bear the risk of nonpersuasion not only accords with the usual rules of litigation, but also is compelled by what we have said about the nature of habeas relief. "When the process of direct review . . . comes to an end, a presumption of finality and legality attaches to the conviction and sentence." *Barefoot* v. *Estelle*, 463 U. S. 880, 887 (1983). We have acknowledged that the "writ strikes at finality," one of the "law's very objects," *McCleskey* v. *Zant*, 499 U. S. 467, 491 (1991), and that when a habeas petitioner obtains a new trial, the government is put at a disadvantage "through the 'erosion of memory' and 'dispersion of witnesses' that occur with the passage of time," *Kuhlmann* v. *Wilson*, 477 U. S. 436, 453 (1986) (plurality opinion) (quoting *Engle* v. *Isaac*, 456 U. S. 107, 127–128 (1982)). Our habeas cases indicate that upsetting the finality of judgments should be countenanced only in rare instances. See, *e. g.*, *Brecht* v. *Abrahamson*, 507 U. S. 619, 633 (1993) (noting that "the writ of habeas corpus has historically been regarded as an extraordinary remedy").

We have ample cause to be wary of the writ. Our criminal law does not routinely punish the innocent. Instead, our Constitution requires proof of guilt beyond a reasonable doubt. See *In re Winship*, 397 U. S. 358 (1970). As a result, the overwhelming majority of the innocent will never reach the habeas stage, since they will not have been found guilty at trial. Appeals and possible state postconviction relief further reduce the possibility that an innocent is in custody. The presumption of finality that we apply in habeas proceedings is therefore well founded.

Our habeas jurisprudence has also been informed by a proper recognition of the affront to a State when federal

courts conduct habeas review. Habeas review "'disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority.'" *Duckworth* v. *Eagan*, 492 U. S. 195, 210 (1989) (O'CONNOR, J., concurring) (quoting *Harris* v. *Reed*, 489 U. S. 255, 282 (1989) (KENNEDY, J., dissenting)). See also *McCleskey*, *supra*, at 491; *Engle*, *supra*, at 128. Where the habeas court cannot say that an error resulted in harm, it seems particularly disrespectful to resolve doubts *against* the propriety of state-court judgments.

Our "harmless-error" inquiry in the habeas context concerns whether an error "'had substantial and injurious effect or influence in determining the jury's verdict.'" *Brecht*, *supra*, at 627 (quoting *Kotteakos* v. *United States*, 328 U. S. 750, 776 (1946)). As alluded to earlier, *supra*, at 446, this test consists of a causation inquiry—was the error a cause of the conviction. Thus, like all plaintiffs, the habeas plaintiff must show causation if he is to succeed.

II

The Court derives its contrary rule from cases construing the harmless-error statute, the purposes underlying the writ of habeas corpus, and the virtue of administrative consistency that stems from following established precedent. The Court's analysis is unpersuasive.

A

The Court begins by examining harmless-error practice in the context of direct criminal appeals. I do not quarrel with the majority's conclusion that once an error has been shown on direct appeal, the government must demonstrate that it was harmless if the conviction is to stand. See *ante*, at 437–438 (citing *Kotteakos*, *supra*, at 764–765, 776; *Chapman* v. *California*, 386 U. S. 18, 24 (1967); and *United States*

v. *Olano*, 507 U. S. 725, 741 (1993)). Still, neither the harmless-error statute (which was the subject of *Kotteakos*) nor the rules governing harmless errors in district courts (discussed in *Olano*) apply to habeas review of errors that occurred in a *prior* case. See 28 U. S. C. § 2111; Fed. Rule Crim. Proc. 52(a); see also Fed. Rule Civ. Proc. 61.

To be sure, we have borrowed the applicable standard for judging harmlessness in habeas from cases interpreting the federal harmless-error statute. See, *e. g.*, *Brecht*, *supra*, at 631. Applying harmless-error analysis makes sense, because a trivial error could not be said to cause custody and thus warrant habeas relief. But the harmless-error statute and rules do not apply of their own force in the habeas cases, and so the harmless-error precedents relied upon by the majority are certainly not dispositive. Indeed, *Brecht* itself—despite adopting the *standard* for harmlessness set out in *Kotteakos*—departed from *Kotteakos* by placing the *burden* upon the habeas petitioner to "establish" that this standard has been met. See 507 U. S., at 637.

If we *are* to look at cases examining the harmless-error statute, I would think that civil cases would be of greater relevance. As the Court admits, habeas is a civil proceeding. See *ante*, at 440 (citing *Browder* v. *Director, Dept. of Corrections of Ill.*, 434 U. S. 257, 269 (1978)). Although the Court acknowledges that *Palmer* v. *Hoffman*, 318 U. S. 109 (1943), put the burden on the party claiming prejudice to demonstrate it, the Court dismisses *Palmer* as a pre-*Kotteakos* case about technical errors. See *ante*, at 439. But *Kotteakos* did not purport to overrule *Palmer*. Nor is it true that the rule in *Palmer* is limited to cases involving technical errors. *Palmer* merely quoted former 28 U. S. C. § 391 (the predecessor to the modern § 2111, and the statute at issue in *Kotteakos* as well), which itself referred to "technical errors." *Palmer* held that the party seeking relief from a judgment because of an erroneous ruling "carries the burden of showing that prejudice resulted"; it did not say

that only those challenging "technically" erroneous rulings were so encumbered. See 318 U. S., at 116. Accordingly, most of the Courts of Appeals that have considered the issue place the burden of showing prejudice on the civil appellant, just as *Palmer* did. See, *e. g.*, *Smith* v. *Wal-Mart Stores (No. 471)*, 891 F. 2d 1177, 1180 (CA5 1990) *(per curiam)*; *United States* v. *Killough*, 848 F. 2d 1523, 1527 (CA11 1988); *United States* v. *Seaboard Surety Co.*, 817 F. 2d 956, 964 (CA2), cert. denied, 484 U. S. 855 (1987); see also *ante*, at 440 (citing cases from the Sixth, Eighth, and Tenth Circuits). But see *Barth* v. *Gelb*, 2 F. 3d 1180, 1188 (CADC 1993) (quoting the "grave doubt" language of *Kotteakos*, *supra*, at 765).

The Court concludes that *Palmer* and these cases may be disregarded because the federal harmless-error statute, 28 U. S. C. § 2111, makes no distinction between civil and criminal cases; since the rule in the criminal context places the burden of persuasion on the government, the Court decides that the same should be true in the civil context. *Ante*, at 441–442. But the majority's syllogism could just as easily be turned against the result it reaches. Authority in the *civil* context assigns the risk of nonpersuasion to the party alleging error, and since the statute draws no distinction between civil and criminal cases, we might just as easily conclude that the civil rule should be followed in the criminal context. The Court's reasoning yields no determinate answer.

As indicated above, however, the harmless-error provisions do not actually apply in habeas cases anyway. We have no occasion to harmonize the harmless-error cases by overruling *Palmer* and by rejecting the practice that prevails in the majority of the Courts of Appeals that have considered the issue, as the Court does today.

B

The Court's second claim is that its "conclusion is consistent with the basic purposes underlying the writ of habeas corpus." *Ante*, at 442. As part of its argument, the Court

lays claim to the moral high ground: "[W]e are dealing here with an error of constitutional dimension—the sort that risks an unreliable trial outcome and the consequent conviction of an innocent person." *Ibid.* The Court suggests that when there is a grave doubt about the harmfulness of an error, "a legal rule requiring issuance of the writ will, at least often, avoid a grievous wrong—holding a person 'in custody in violation of the Constitution . . . of the United States.'" *Ibid.* (quoting 28 U. S. C. §§ 2241(c)(3), 2254(a)).

The Court concedes that there are other interests at stake—a State's interest in the finality of its judgments and the promotion of federal-state comity, see *ante*, at 443—but goes on to set these principles aside. The Court concludes that the State's interest in finality, while "legitimate and important," *ibid.*, is diminished by the fact that "the number of acquittals wrongly caused by grant of the writ and delayed retrial . . . will be small when compared with the number of persons whom [the] opposite rule . . . would wrongly imprison or execute," *ibid.*

Despite its rhetoric, the Court itself is merely balancing the costs and benefits associated with disturbing judgments when a court is in grave doubt about harm. The Court decides that the possibility of unlawful custody should lead to the adoption of its grave doubt rule. But because the Court draws the line at "grave doubt" rather than "significant doubt" or "any doubt," it is not willing to go as far as it must in order to ensure that no one is unlawfully imprisoned. Thus, under the majority's assumptions, even its own rule will guarantee that "many, *in fact*, will be held in unlawful custody." *Ante*, at 442.

It is important to recognize, moreover, that when the Court discusses erroneous imprisonments and executions, it is not addressing questions of innocence or guilt. The standard for judging harmlessness in habeas cases certainly does not turn on the innocence of the habeas petitioner. In fact, the Court's rule applies only when the habeas court can-

not make up its mind about whether a jury would have entertained any reasonable doubt about the defendant's guilt. Though the majority seems to suggest otherwise, it certainly will not be true that in half of such cases, the State will have unjustly imprisoned an innocent person.

C

Citing *Kotteakos*, *Chapman*, and other cases, the Court concludes that its rule will be easier to administer because it is consistent with the way courts have treated grave doubts about harm. *Ante*, at 443. As indicated above, *Palmer* and the majority view in the Courts of Appeals provide an equally attractive rule that is consistent with longstanding practice. As for the Court's assertion that its rule eliminates "the need for judges to read lengthy records to determine prejudice in every habeas case," *ante*, at 443, I thought it settled that "it is the duty of a reviewing court to consider the trial record as a whole" when conducting a harmless-error analysis, *United States* v. *Hasting*, 461 U. S. 499, 509 (1983). Surely a judge cannot, in the midst of reading a record, declare himself to be in grave doubt, stop reviewing, and issue the writ. Because further review may always disturb the judge's current view of the error, the judge cannot stop until he finishes reviewing the relevant portions of the record. Indeed, given that further review always has the potential to resolve any grave doubt, one is tempted to require a judge to continue to read and reread the relevant portions of the record until his grave doubts dissipate.

III

Fortunately, the rule announced today will affect only a minuscule fraction of cases. Even when there is a close question about whether an error was harmful, the conscientious judge ordinarily should make a ruling as to harm. The Court's rule is not a means for judges to escape difficult decisions; it applies only in that "special circumstance" in which

a judge, after a thorough review of the record, remains in equipoise. See *ante*, at 435.

The rule has such limited application that it most likely will have no effect on this case. The majority suggests that O'Neal "might have lost in the Court of Appeals, not because the judges concluded that [any supposed] error *was* harmless, but because the record of the trial left them in grave doubt about the effect of the error." *Ante*, at 436. The Sixth Circuit did observe that "[t]he habeas petitioner bears the burden of establishing . . . prejudice." *O'Neal* v. *Morris*, 3 F. 3d 143, 145 (1993). But the Court of Appeals did not refer again to this burden and did not appear to rely on it in reaching a decision. See *id.*, at 147. That we chose this case to establish a "grave doubt" rule is telling: Cases in which habeas courts are in equipoise on the issue of harmlessness are astonishingly rare.

Though the question that the Court decides today will have very limited application, I believe that the Court gives the wrong answer to that question.

Accordingly, I respectfully dissent.

Syllabus

UNITED STATES ET AL. *v.* NATIONAL TREASURY EMPLOYEES UNION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93–1170. Argued November 8, 1994—Decided February 22, 1995

After § 501(b) of the Ethics in Government Act of 1978 was amended to prohibit a Member of Congress, federal officer, or other Government employee from accepting an honorarium for making an appearance or speech or writing an article, respondents—including individual members of, and a union representing, a class composed of all Executive Branch employees below grade GS–16 who, but for § 501(b), would receive honoraria—filed a suit challenging the statute as an unconstitutional abridgment of their freedom of speech. The speeches and articles for which respondents had received honoraria in the past concerned matters such as religion, history, dance, and the environment; with few exceptions, neither their subjects nor the persons or groups paying for them had any connection with respondents' official duties. In granting respondents' motion for summary judgment, the District Court held § 501(b) unconstitutional insofar as it applies to Executive Branch employees and enjoined the Government from enforcing it against any such employee. The Court of Appeals affirmed, emphasizing, *inter alia*, that the Government's failure as to many respondents to identify some sort of nexus between the employee's job and either the expression's subject matter or the payor's character undercut its proffered concern about actual or apparent improprieties in the receipt of honoraria.

Held: Section 501(b) violates the First Amendment. Pp. 464–480.

(a) The honoraria ban imposes the kind of burden that abridges speech under the First Amendment. Where, as here, Government employees seek to exercise their right as citizens to comment on matters of public interest, and are not attempting simply to speak as employees upon personal matters, the Government must be able to satisfy a balancing test of the type set forth in *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568, in order to maintain a statutory restriction on the employees' speech. See *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 564. However, because § 501(b) constitutes a wholesale deterrent to a broad category of expression by a massive number of potential speakers, the Government's burden here is even greater than it was in *Pickering* and its progeny, which

usually involved individual disciplinary actions taken in response to particular government employees' actual speech. Specifically, the Government must show that the interests of both potential audiences and a vast group of present and future employees in a broad range of present and future expression are outweighed by that expression's "necessary impact on the actual operation" of the Government, *Pickering*, 391 U. S., at 571. Although § 501(b) neither prohibits any speech nor discriminates among speakers based on the content or viewpoint of their messages, its prohibition on compensation unquestionably imposes a significant burden on respondents' expressive activity by inducing them to curtail their expression if they wish to continue their employment. Moreover, the ban imposes a far more significant burden on them than on the relatively small group of lawmakers whose past receipt of honoraria assertedly motivated its enactment. The large-scale disincentive to expression also imposes a significant burden on the public's right to read and hear what Government employees would otherwise have written and said. Pp. 464–470.

(b) The Government has failed to show how the interests it asserts to justify § 501(b) are served by applying the honoraria ban to respondents. *Public Workers* v. *Mitchell*, 330 U. S. 75, distinguished. Although the asserted concern that federal officers not misuse or appear to misuse power by accepting compensation for their unofficial and nonpolitical writing and speaking activities is undeniably powerful, the Government cites no evidence of misconduct related to honoraria by the vast rank and file of federal employees below grade GS–16. The limited evidence of actual or apparent impropriety by Members of Congress and high-level executives cannot justify extension of the honoraria ban to that rank and file, an immense class of workers with negligible power to confer favors on those who might pay to hear them speak or to read their articles. Moreover, while operational efficiency is undoubtedly a vital governmental interest, several features of the text of the ban and of the pertinent regulations cast serious doubt on the Government's submission that Congress perceived honoraria as so threatening to the efficiency of the entire federal service as to render the ban a reasonable response to the threat. First, the total exemption of payments for "any series of appearances, speeches, or articles" unrelated to the employee's official duties or status from § 505(3)'s definition of "honorarium" undermines application of the ban to individual speeches and articles with no nexus to Government employment. Second, the definition's limitation of "honoraria" to payments for expressive activities, as opposed to other services that a Government employee might perform in his or her spare time, requires a justification far stronger than the mere speculation

about serious harms advanced by the Government. Finally, the regulations' exclusions from the coverage of the statutory terms "appearance, speech or article" of a wide variety of performances and writings that would normally appear to have no nexus with an employee's job are more consistent with the presumption that the federal work force consists of dedicated and honorable civil servants than with the honoraria ban's dubious application not merely to policymakers, whose loss of honoraria was offset by a salary increase, but to all Executive Branch employees below grade GS–16. Pp. 470–477.

(c) Insofar as the judgment below grants relief to senior federal executives who are not parties to this case, it is reversed as overinclusive. However, in light of this Court's obligation to avoid judicial legislation and its inability to correctly identify the exact terms of any nexus requirement that Congress would have adopted in a more limited honoraria ban, the Court refuses to modify the remedy further by crafting such a nexus requirement. Pp. 477–480.

990 F. 2d 1271, affirmed in part, reversed in part, and remanded.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, *post*, p. 480. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined, *post*, p. 489.

Deputy Solicitor General Bender argued the cause for the United States. With him on the briefs were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Michael R. Dreeben*, *John C. Hoyle*, and *Alfred Mollin.*

Gregory O'Duden argued the cause for respondents. With him on the brief were *Elaine Kaplan*, *Barbara A. Atkin*, *Mark D. Roth*, *Anne Wagner*, *John Vanderstar*, *Steven R. Shapiro*, and *Arthur B. Spitzer.**

**Stephen F. Black* and *W. Hardy Callcott* filed a brief for Common Cause as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Freedom to Read Foundation et al. by *R. Bruce Rich*, *Paul M. Smith*, *Bruce J. Ennis, Jr.*, *Julie M. Carpenter*, *Elliot M. Mincberg*, and *Lawrence S. Ottinger;* for Public Citizen, Inc., by *Alan B. Morrison;* for the Senior Executives Association by *George J. Shaw, Jr.*, and *William L. Bransford;* and for Peter Bollen by *Stephen S. Ostrach.*

JUSTICE STEVENS delivered the opinion of the Court.

In 1989 Congress enacted a law that broadly prohibits federal employees from accepting any compensation for making speeches or writing articles. The prohibition applies even when neither the subject of the speech or article nor the person or group paying for it has any connection with the employee's official duties. We must decide whether that statutory prohibition comports with the Constitution's command that "Congress shall make no law . . . abridging the freedom of speech." We hold that it does not.

I

In 1967 Congress authorized the appointment every four years of a special Commission on Executive, Legislative, and Judicial Salaries, whose principal function would be to recommend appropriate levels of compensation for the top positions in all three branches of the Federal Government. Each of the first five Quadrennial Commissions recommended significant salary increases, but those recommendations went largely ignored. The Report of the 1989 Quadrennial Commission, however, was instrumental in leading to the enactment of the Ethics Reform Act of 1989,[1] which contains the provision challenged in this case.

The 1989 Quadrennial Commission's report noted that inflation had decreased the salary levels for senior Government officials, measured in constant dollars, by approximately 35% since 1969. The report

> "also found that because their salaries are so inadequate, many members of Congress are supplementing their official compensation by accepting substantial amounts of

[1] 103 Stat. 1760, 5 U. S. C. App. § 101 *et seq.* (1988 ed., Supp. V). The 1989 statute is a comprehensive amendment of the Ethics in Government Act of 1978, 92 Stat. 1824. The provisions of the Act governing outside income, including honoraria, are codified at 5 U. S. C. App. § 501 *et seq.* (1988 ed., Supp. V).

> 'honoraria' for meeting with interest groups which desire to influence their votes. Albeit to a less troubling extent, the practice of accepting honoraria also extends to top officials of the Executive and Judicial branches." Fairness for Our Public Servants: Report of The 1989 Commission on Executive, Legislative and Judicial Salaries vi (Dec. 1988).

Accordingly, the Commission recommended that "salary levels for top officials be set at approximately the same amount in constant dollars" as those in effect in 1969 and further that "Congress enact legislation abolishing the practice of accepting honoraria in all three branches." *Ibid.*

The President's Commission on Federal Ethics Law Reform subsequently issued a report that endorsed the Quadrennial Commission's views. The President's Commission recommended enacting a ban on receipt of honoraria "by all officials and employees in all three branches of government." To Serve With Honor: Report of the President's Commission on Federal Ethics Law Reform 36 (Mar. 1989). Explaining the breadth of its proposal, it added:

> "In recommending this ban, we also recognize, as did the Quadrennial Commission, that the statutory definition of honoraria must be broad enough to— 'close present and potential loopholes such as receipt of consulting, professional or similar fees; payments for serving on boards; travel; sport, or other entertainment expenses not reasonably necessary for the appearance involved; or any other benefit that is the substantial equivalent of an honorarium.'" *Ibid.* (quoting Fairness for Our Public Servants, at 24).

Although not adopted in their entirety, the two Commissions' recommendations echo prominently in the Ethics Reform Act of 1989. Section 703 of that Act provided a 25% pay increase to Members of Congress, federal judges, and

certain high-level Executive Branch employees above the salary grade GS–15.[2] See 103 Stat. 1768. Another section—the one at issue here—amended § 501(b) of the Ethics in Government Act of 1978 to create an "Honoraria Prohibition," which reads: "An individual may not receive any honorarium while that individual is a Member, officer or employee." *Id.*, at 1760.

Section 505 of the Ethics Reform Act defined "officer or employee" to include nearly all employees of the Federal Government and "Member" to include any Representative, Delegate, or Resident Commissioner to Congress. The Congressional Operations Appropriations Act, 1992, adopted in 1991,[3] extended both the salary increase and the prohibition against honoraria to the Senate. The 1989 Act defined "honorarium" to encompass any compensation paid to a Government employee for "an appearance, speech or article."[4] The 1992 Appropriations Act amended that definition to exclude any *series* of appearances, speeches, or articles unrelated to the employee's official duties or status. The definition now reads as follows:

> "(3) The term 'honorarium' means a payment of money or any thing of value for an appearance, speech

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[2] The General Schedule, abbreviated "GS," is the basic pay schedule for employees of the Federal Government. 5 U. S. C. § 5332 (1988 ed. and Supp. V). The Executive Branch positions to which the statute gave the salary increase are on the Executive Schedule, a separate pay scale above the General Schedule. See 103 Stat. 1768.

[3] 105 Stat. 447, 5 U. S. C. § 5318 note (1988 ed., Supp. V).

[4] The original definition read as follows: "(3) The term 'honorarium' means a payment of money or any thing of value for an appearance, speech or article by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed." 103 Stat. 1761, 1762.

> or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed." 5 U. S. C. App. § 505(3) (1988 ed., Supp. V).

Section 503(2) of the Ethics Reform Act provides that the statutory provisions governing honoraria for employees of the Executive Branch shall be subject to rules and regulations issued by the Office of Government Ethics (OGE) and administered by designated agency ethics officials. 5 CFR § 2636.201 *et seq.* (1994). OGE's regulations permit reimbursement of certain expenses associated with appearances, speeches, and articles. The regulations also confine the reach of each of those terms. Thus, a performance using "an artistic, athletic or other such skill or talent" is not an "appearance"; reading a part in a play or delivering a sermon is not a "speech"; and works of "fiction, poetry, lyrics, or script" are not "article[s]." §§ 2636.203(b), (d). The regulations permit teaching a course involving multiple presentations at an accredited program or institution.

The Attorney General may enforce the prohibition against honoraria by a civil action to recover a penalty of not more than the larger of $10,000 or the amount of the honorarium. If an employee has accepted an honorarium in good-faith reliance on an opinion of either the OGE or the ethics officer of her employing agency, she is not subject to the civil penalty. 5 U. S. C. App. § 504 (1988 ed., Supp. V).

II

Two unions and several career civil servants employed full time by various Executive departments and agencies filed suit in the United States District Court for the District of Columbia to challenge the constitutionality of the honoraria ban. Pursuant to a stipulation with the Government, the District Court certified respondent National Treasury Employees Union as the representative of a class composed of all Executive Branch employees "below grade GS–16, who—but for 5 U. S. C. app. 501(b)—would receive 'honoraria,' as defined in 5 U. S. C. app. 505(3)." App. 124–125.[5] All of the individual respondents save one are members of the class; the exception is a grade GS–16 lawyer for the Nuclear Regulatory Commission who has published articles about Russian history.

Each of the individual respondents alleges that he or she has in the past received compensation for writing or speaking on various topics in full compliance with earlier ethics regulations. The record contains a number of affidavits describing respondents' past activities that the honoraria ban would now prohibit. A mail handler employed by the Postal Service in Arlington, Virginia, had given lectures on the Quaker religion for which he received small payments that were "not much, but enough to supplement my income in a way that makes a difference." *Id.*, at 47. An aerospace engineer employed at the Goddard Space Flight Center in Greenbelt, Maryland, had lectured on black history for a fee of $100 per lecture. *Id.*, at 63. A microbiologist at the Food and Drug Administration had earned almost $3,000 per year writing articles and making radio and television appearances reviewing dance performances. *Id.*, at 77. A tax examiner

[5] In 1993, employees in the certified class earned between $11,903 (GS–1, step 1) and $86,589 (GS–15, step 10). 5 U. S. C. § 5332 (1988 ed., Supp. V). According to OPM, the mean grade was GS–9, which paid workers between $27,789 and $36,123. Office of Personnel Management, Demographic Profile of the Federal Workforce, App. 2, p. 79 (Sept. 1992).

employed by the Internal Revenue Service in Ogden, Utah, had received comparable pay for articles about the environment. *Id.*, at 67.

The District Court granted respondents' motion for summary judgment, held the statute "unconstitutional insofar as it applies to Executive Branch employees of the United States government," and enjoined the Government from enforcing the statute against any Executive Branch employee. 788 F. Supp. 4, 13–14 (1992). The court acknowledged that Congress' interest in promoting "the integrity of, and popular confidence in and respect for, the federal government" is "vital." *Id.*, at 9. The court also characterized § 501(b) as a content-neutral restriction on the speech of "government employees who, as a condition of their employment, have relinquished certain First Amendment prerogatives . . . ." *Id.*, at 10. Nevertheless, the court concluded that "regulatory legislation having the effect of suppressing freedom of expression to the slightest degree" could "go no farther than necessary to accomplish its objective." *Ibid.* The court found the statute both overinclusive, because it restricts so much speech, and underinclusive, because it prohibits honoraria for some forms of speech and not others. *Id.*, at 11. Concluding from the legislative history that Congress had been concerned mainly about appearances of impropriety among its own Members, the court found the application of § 501(b) to the parties before it severable from the remainder of the Act.

The Court of Appeals affirmed. 990 F. 2d 1271 (CADC 1993). It noted that, even though § 501(b) prohibits no speech, the denial of compensation places a significant burden on employees. The court held that the Government's strong, undisputed interest "in protecting the integrity and efficiency of public service and in avoiding even the appearance of impropriety created by abuse of the practice of receiving honoraria" does not justify a substantial burden on speech that does not advance that interest. *Id.*, at 1274. The court emphasized that the Government's failure as to

many respondents to identify "some sort of nexus between the employee's job and either the subject matter of the expression or the character of the payor" undercut its proffered concern about actual or apparent improprieties. *Id.*, at 1275.[6] Stressing the absence of evidence of either corruption or the appearance of corruption among lower level federal employees receiving honoraria with no connection to their employment, the Court of Appeals concluded that the Government had failed to justify the ban's burden on their speech. *Id.*, at 1277. The court rejected the Government's argument that administrative and enforcement difficulties justify § 501(b)'s broad prophylactic rule.[7]

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[6] The Court of Appeals acknowledged that "even some of the plaintiffs receive payments that might at least raise an eyebrow," citing a business editor for the Voice of America who received payment for business analysis and a GS–7 "tax examining assistant" as to whom payment of any honorarium might raise some concern "[i]n view of the universality of citizens' subjection to the Internal Revenue Service." 990 F. 2d, at 1275–1276. Another plaintiff whose expressive activities appear to come within a nexus to Government employment is the Treasury Employees' Union itself, which complains that the honoraria ban has hindered publication of its chapters' newsletters. App. 58–62.

[7] "As summarized in testimony before the Senate Committee on Governmental Affairs, the prior regulations allowed honoraria so long as the speaker or writer held a rank lower than GS–16 and all of the following questions could be answered negatively:

"(1) Is the honorarium offered for carrying out government duties or for an activity that focuses specifically on the employing agency's responsibilities, policies and programs?

"(2) Is the honorarium offered to the government employee or family member because of the official position held by the employee?

"(3) Is the honorarium offered because of the government information that is being imparted?

"(4) Is the honorarium offered by someone who does business with or wishes to do business with the employee in his or her official capacity?

"(5) Were any government resources or time used by the employee to produce the materials for the article or speech or make the appearance?

"S. Rep. No. 29, 102d Cong., 1st Sess., at 8 (1991). While some of the limits may have an amorphous quality about them (such as the one purporting to probe the motive of the honorarium's offeror), there appears no

Turning to the question of remedy, the Court of Appeals agreed with the District Court that § 501(b)'s application to Executive Branch employees is severable from the remainder of the statute. The legislative history convinced the court that Congress had adopted the honoraria ban primarily in response to the growing concern about payments to its own Members; moreover, the statute itself disclosed that "the honorarium ban was adopted as part of a package of which a key ingredient was a sharp increase in the salary of members of Congress, judges, and a limited class of senior executive branch officials." *Id.*, at 1278 (citation omitted). Accordingly, the court fashioned a remedy that, in effect, rewrote the statute by eliminating the words "officer or employee" from § 501(b) "*except* in so far as those terms encompass members of Congress, officers and employees of Congress, judicial officers and judicial employees." *Id.*, at 1279.[8]

Over two dissents, the Court of Appeals denied a petition for rehearing en banc. 3 F. 3d 1555 (1993). We granted certiorari. 511 U. S. 1029 (1994).

III

Federal employees who write for publication in their spare time have made significant contributions to the marketplace of ideas. They include literary giants like Nathaniel Hawthorne and Herman Melville, who were employed by the Customs Service; Walt Whitman, who worked for the De-

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actual experience of difficulty, and one can hypothesize rules of thumb that could constrain government discretion." 990 F. 2d, at 1276–1277.

[8] In dissent, Judge Sentelle maintained that the statute was constitutional. He also objected to the court's remedy. In his opinion, the majority's severance of the statutory provisions relating to the Executive Branch was "nothing less than judicial legislation," 990 F. 2d, at 1296 (citation and internal quotation marks omitted), and its reluctance to invalidate the honoraria ban as to Members of Congress would have been "better served by striking the statute down as applied" to the plaintiff class. *Id.*, at 1298.

partments of Justice and Interior; and Bret Harte, an employee of the mint.[9] Respondents have yet to make comparable contributions to American culture, but they share with these great artists important characteristics that are relevant to the issue we confront.

Even though respondents work for the Government, they have not relinquished "the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest." *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568 (1968). They seek compensation for their expressive activities in their capacity as citizens, not as Government employees. They claim their employment status has no more bearing on the quality or market value of their literary output than it did on that of Hawthorne or Melville. With few exceptions, the content of respondents' messages has nothing to do with their jobs and does not even arguably have any adverse impact on the efficiency of the offices in which they work. They do not address audiences composed of co-workers or supervisors; instead, they write or speak for segments of the general public. Neither the character of the authors, the subject matter of their expression, the effect of the content of their expression on their official duties, nor the kind of audiences they address has any relevance to their employment.

In *Pickering* and a number of other cases we have recognized that Congress may impose restraints on the job-related speech of public employees that would be plainly unconstitutional if applied to the public at large. See, *e. g.*, *Snepp* v. *United States*, 444 U. S. 507 (1980). When a court is required to determine the validity of such a restraint, it must "arrive at a balance between the interests of the [employee],

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[9] See A. Turner, Nathaniel Hawthorne: A Biography 170–187 (1980); N. Arvin, Herman Melville 259–260 (1950); G. Allen, The Solitary Singer: A Critical Biography of Walt Whitman 319–321, 408 (1985); H. Merwin, The Life of Bret Harte 33–34 (1911).

as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering,* 391 U. S., at 568.

In such cases, which usually have involved disciplinary actions taken in response to a government employee's speech, we have applied *Pickering*'s balancing test only when the employee spoke "*as a citizen* upon matters of public concern" rather than "*as an employee* upon matters only of personal interest." *Connick* v. *Myers,* 461 U. S. 138, 147 (1983) (emphasis added). Thus, private speech that involves nothing more than a complaint about a change in the employee's own duties may give rise to discipline without imposing any special burden of justification on the government employer. *Id.,* at 148–149. If, however, the speech does involve a matter of public concern, the government bears the burden of justifying its adverse employment action. *Rankin* v. *McPherson,* 483 U. S. 378, 388 (1987);[10] see also *Waters* v. *Churchill,* 511 U. S. 661, 674 (1994). Respondents' expressive activities in this case fall within the protected category of citizen comment on matters of public concern rather than employee comment on matters related to personal status in the workplace. The speeches and articles for which they received compensation in the past were addressed to a public audience, were made outside the workplace, and involved content largely unrelated to their Government employment.

The sweep of § 501(b) makes the Government's burden heavy. Unlike *Pickering* and its progeny, this case does not

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[10] *Rankin* is the only case in which we directly applied the *Pickering* balance to speech whose content had nothing to do with the workplace. The employee in that case was fired based on a statement in the workplace about an assassination attempt on the President. Satisfied that the statement was not a threat to kill the President, which the First Amendment would not have protected, we concluded that the statement involved a matter of public concern and that the firing violated the First Amendment. 483 U. S., at 386–387, 392.

involve a *post hoc* analysis of one employee's speech and its impact on that employee's public responsibilities. Cf. *Waters* v. *Churchill*, 511 U. S. 661 (1994); *Rankin* v. *McPherson*, 483 U. S. 378 (1987); *Connick* v. *Myers*, 461 U. S. 138 (1983); *Perry* v. *Sindermann*, 408 U. S. 593 (1972). Rather, the Government asks us to apply *Pickering* to Congress' wholesale deterrent to a broad category of expression by a massive number of potential speakers.[11] In *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 564 (1973), we established that the Government must be able to satisfy a balancing test of the *Pickering* form to maintain a statutory restriction on employee speech. Because the discussion in that case essentially restated in balancing terms our approval of the Hatch Act in *Public Workers* v. *Mitchell*, 330 U. S. 75 (1947), we did not determine how the components of the *Pickering* balance should be analyzed in the context of a sweeping statutory impediment to speech.[12]

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[11] The dissent seems to regard the honoraria ban as less onerous than our applications of *Pickering* to the speech of individual employees because the ban "is unrelated to the message or the viewpoint expressed by the government employee." *Post*, at 500. Our *Pickering* cases only permit the Government to take adverse action based on employee speech that has adverse *effects* on "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U. S., at 568. That certain messages may be more likely than others to have such adverse effects does not render *Pickering*'s restriction on speech viewpoint based. Even a teacher's persistent advocacy *in favor of* the actions of the school board, cf. *ibid.*, or an employee's exhortation *against* an attempt on the President's life, cf. *Rankin* v. *McPherson*, 483 U. S. 378 (1987), could provide proper grounds for adverse action if the government employer could demonstrate that such expression disrupted workplace efficiency. The honoraria ban as applied to respondents burdens speech far more than our past applications of *Pickering* because the ban deters an enormous quantity of speech before it is uttered, based only on speculation that the speech might threaten the Government's interests.

[12] Two decades ago, a three-Justice plurality invoked *Pickering* in the course of upholding against vagueness and overbreadth challenges a provision of the Lloyd-La Follette Act, 5 U. S. C. § 7501(a) (1970 ed.), that allowed the discharge of certain federal employees "only for such cause as

We normally accord a stronger presumption of validity to a congressional judgment than to an individual executive's disciplinary action. See *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 671, and n. 2 (1994) (STEVENS, J., concurring in part and concurring in judgment). The widespread impact of the honoraria ban, however, gives rise to far more serious concerns than could any single supervisory decision. See *City of Ladue* v. *Gilleo*, 512 U. S. 43, 54–55 (1994).[13] In addition, unlike an adverse action taken in response to actual speech, this ban chills potential speech before it happens. Cf. *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697 (1931). For these reasons, the Government's burden is greater with respect to this statutory restriction on expression than with respect to an isolated disciplinary action. The Government must show that the interests of both potential audiences and a vast group of present and future employees in a broad range of present and future expression are outweighed by that expression's "necessary impact on the actual operation" of the Government. *Pickering*, 391 U. S., at 571.

Although § 501(b) neither prohibits any speech nor discriminates among speakers based on the content or viewpoint of their messages, its prohibition on compensation unquestionably imposes a significant burden on expressive activity. See *Simon & Schuster, Inc.* v. *Members of N. Y.*

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will promote the efficiency of the [civil] service." *Arnett* v. *Kennedy*, 416 U. S. 134, 160–161 (1974). The plaintiff in that case stood accused of several work-related misdeeds, including making false and defamatory statements against co-workers. The plurality characterized the employee's false accusation that his superiors had accepted a bribe as "not protected by the First Amendment." *Id.*, at 158–159. Thus, the *Arnett* plurality merely cited *Pickering* to support a general statute's *post hoc* application to a single employee's arguably unprotected speech.

[13] As of September 30, 1992, the Federal Government employed 1,680,516 workers between grades GS–1 and GS–15. Office of Personnel Management, Demographic Profile of the Federal Workforce, App. 2, p. 79 (Sept. 1992).

State Crime Victims Bd., 502 U. S. 105 (1991); see also *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 227–231 (1987); *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575 (1983). Publishers compensate authors because compensation provides a significant incentive toward more expression.[14] By denying respondents that incentive, the honoraria ban induces them to curtail their expression if they wish to continue working for the Government.[15]

The ban imposes a far more significant burden on respondents than on the relatively small group of lawmakers whose past receipt of honoraria motivated its enactment. The absorbing and time-consuming responsibilities of legislators and policymaking executives leave them little opportunity for research or creative expression on subjects unrelated to their official responsibilities. Such officials often receive invitations to appear and talk about subjects related to their work because of their official identities. In contrast, invitations to rank-and-file employees usually depend only on the market value of their messages. The honoraria ban is unlikely to reduce significantly the number of appearances by high-ranking officials as long as travel expense reimbursement for the speaker and one relative is available as an alternative form of remuneration. See *supra*, at 460. In

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[14] This proposition is self-evident even to those who do not fully accept Samuel Johnson's cynical comment: "'No man but a blockhead ever wrote, except for money.'" J. Boswell, Life of Samuel Johnson LL. D. 302 (R. Hutchins ed. 1952).

[15] Several respondents indicated that the ban would compel them to discontinue their previously compensated expressive activities. App. 46, 50–51, 55, 66, 69, 74. In at least one case, a newspaper refused to continue publishing a respondent's work if he could not accept pay for it. *Id.*, at 78. Despite the OGE regulations' provision for recovery of certain expenses related to expressive activity, see *supra*, at 460, several respondents also reported that the ban would prevent or complicate their recovering other necessary expenses, creating a further disincentive to speak and write. App. 45–46, 55–56, 65, 74–75, 81, 84, 88.

contrast, the denial of compensation for lower paid, nonpolicymaking employees will inevitably diminish their expressive output.

The large-scale disincentive to Government employees' expression also imposes a significant burden on the public's right to read and hear what the employees would otherwise have written and said. See *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 756–757 (1976). We have no way to measure the true cost of that burden, but we cannot ignore the risk that it might deprive us of the work of a future Melville or Hawthorne.[16] The honoraria ban imposes the kind of burden that abridges speech under the First Amendment.

IV

Because the vast majority of the speech at issue in this case does not involve the subject matter of Government employment and takes place outside the workplace, the Government is unable to justify § 501(b) on the grounds of immediate workplace disruption asserted in *Pickering* and the cases that followed it. Cf., *e. g., Waters,* 511 U. S., at 664. Instead, the Government submits that the ban comports with the First Amendment because the prohibited honoraria were "reasonably deemed by Congress to interfere with the efficiency of the public service." *Public Workers* v. *Mitchell*, 330 U. S. 75, 101 (1947).

In *Mitchell* we upheld the prohibition of the Hatch Act, 5 U. S. C. § 7324(a)(2), on partisan political activity by all classified federal employees, including, for example, a skilled me-

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[16] These authors' familiar masterworks would survive the honoraria ban as currently administered. Besides exempting all books, the OGE regulations protect fiction and poetry from the ban's coverage, see *infra,* at 476, although the statute's language is not so clear. But great artists deal in fact as well as fiction, and some deal in both. See, *e. g.,* Allen, The Solitary Singer, at 41–55 (discussing Walt Whitman's speeches and nonfiction newspaper writing).

chanic at the mint named Poole who had no policymaking authority. We explained that "[t]here are hundreds of thousands of United States employees with positions no more influential upon policy determination than that of Mr. Poole. Evidently what Congress feared was the cumulative effect on employee morale of political activity by all employees who could be induced to participate actively." 330 U. S., at 101. In *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548 (1973), we noted that enactment of the Hatch Act in 1939 reflected "the conviction that the rapidly expanding Government work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine." *Id.*, at 565. An equally important concern was

> "to further serve the goal that employment and advancement in the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs." *Id.*, at 566.

Thus, the Hatch Act aimed to *protect* employees' rights, notably their right to free expression, rather than to restrict those rights.[17] Like the Hatch Act, the honoraria ban affects hundreds of thousands of federal employees. Unlike partisan political activity, however, honoraria hardly appear to threaten employees' morale or liberty. Moreover, Congress effectively designed the Hatch Act to combat demonstrated ill effects of Government employees' partisan political activities. In contrast, the Government has failed to show how it serves the interests it asserts by applying the honoraria ban to respondents.

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[17] Cf. *Arnett*, 416 U. S., at 159 (Lloyd-La Follette Act's purpose was "to give myriad different federal employees performing widely disparate tasks a common standard of job protection").

The Government's underlying concern is that federal officers not misuse or appear to misuse power by accepting compensation for their unofficial and nonpolitical writing and speaking activities. This interest is undeniably powerful, but the Government cites no evidence of misconduct related to honoraria in the vast rank and file of federal employees below grade GS–16.[18] Instead of a concern about the "cumulative effect" of a widespread practice that Congress deemed to "menace the integrity and the competency of the service," *Mitchell*, 330 U. S., at 103, the Government relies here on limited evidence of actual or apparent impropriety by legislators and high-level executives, together with the purported administrative costs of avoiding or detecting lower level employees' violations of established policies.

As both the District Court and the Court of Appeals noted, the Government has based its defense of the ban on abuses of honoraria by Members of Congress. 990 F. 2d, at

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[18] The Government cites a report of the General Accounting Office (GAO) to support its assertion that the ban is necessary to prevent widespread improprieties. General Accounting Office, Report to the Chairman, Subcommittee on Federal Services, Post Office and Civil Service of the Senate Committee on Governmental Affairs, Employee Conduct Standards: Some Outside Activities Present Conflict-of-Interest Issues (Feb. 1992) (hereinafter GAO Report); see Brief for United States 22–23. The GAO Report found that ethics officials at several large agencies had approved 545 outside speaking activities between 1988 and 1990. GAO Report 8. Over one-third of the total approved activities dealt with subject matter, or involved duties, similar to the employees' Government work. *Id.*, at 58. The GAO Report's conclusions and recommendations dealt exclusively with the problems of outside activities "that were focused specifically on the agencies' responsibilities and/or related directly to the employees' duties." *Id.*, at 13–14. The GAO Report's examples of instances that gave rise to serious concerns about real or apparent impropriety were two cases in which high-level employees (a chemist and a physicist) engaged in consulting activities related to the subject matter of their jobs. *Id.*, at 10. Its 112 pages contain not one mention of any real or apparent impropriety related to a lower level employee or to any employee engaged in writing or speaking or in any conduct unrelated to his or her Government job.

1278; 788 F. Supp., at 13.[19] Congress reasonably could assume that payments of honoraria to judges or high-ranking officials in the Executive Branch might generate a similar appearance of improper influence. Congress could not, however, reasonably extend that assumption to all federal employees below grade GS–16, an immense class of workers with negligible power to confer favors on those who might pay to hear them speak or to read their articles. A federal employee, such as a supervisor of mechanics at the mint, might impair efficiency and morale by using political criteria to judge the performance of his or her staff. But one can envision scant harm, or appearance of harm, resulting from the same employee's accepting pay to lecture on the Quaker religion or to write dance reviews.

Although operational efficiency is undoubtedly a vital governmental interest, *e. g.*, *Rankin*, 483 U. S., at 384, several features of the honoraria ban's text cast serious doubt on the Government's submission that Congress perceived honoraria as so threatening to the efficiency of the entire federal service as to render the ban a reasonable response to the threat. Cf. *Waters*, 511 U. S., at 677–678. The first is the rather strange parenthetical reference to "a series of appearances, speeches, or articles" that the 1991 amendment inserted in the definition of the term "honorarium." The amended definition excludes such a series from the prohibited category unless "the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government." See *supra*, at 460. In other words, accepting pay for a *series* of articles is prohibited if, and only if, a nexus exists between the author's employment and either the subject matter of the expression or the iden-

[19] Portending this reliance, the primary discussion of honoraria in the 1989 Quadrennial Commission's Report appeared as a subtopic in the "Legislative Branch" section. Fairness for Our Public Servants: The Report of The 1989 Commission on Executive, Legislative and Judicial Salaries 24 (Dec. 1988).

tity of the payor. For an *individual* article or speech, in contrast, pay is taboo even if neither the subject matter nor the payor bears any relationship at all to the author's duties.

Congress' decision to provide a total exemption for all unrelated series of speeches undermines application of the ban to individual speeches and articles with no nexus to Government employment. Absent such a nexus, no corrupt bargain or even appearance of impropriety appears likely. The Government's only argument against a general nexus limitation is that a wholesale prophylactic rule is easier to enforce than one that requires individual nexus determinations. See Brief for United States 21–23. The nexus limitation for series, however, unambiguously reflects a congressional judgment that agency ethics officials and the OGE can enforce the statute when it includes a nexus test. A blanket burden on the speech of nearly 1.7 million federal employees requires a much stronger justification than the Government's dubious claim of administrative convenience.

The definition's limitation of "honoraria" to expressive activities also undermines the Government's submission that the breadth of § 501 is reasonably necessary to protect the efficiency of the public service. Both Commissions that recommended the ban stressed the importance of defining honoraria in a way that would close "potential loopholes such as receipt of consulting, professional or similar fees; payments for serving on boards; travel; sport, or other entertainment expenses not reasonably necessary for the appearance involved; or any other benefit that is the substantial equivalent of an honorarium." See *supra,* at 458. Those recommendations reflected a considered judgment that compensation for "an appearance, speech or article" poses no greater danger than compensation for other services that a Government employee might perform in his or her spare time.[20] Congress,

[20] The Government relies heavily on the reports of both the Quadrennial Commission and the President's Commission in defending § 501(b). See Brief for United States 3–5, 19–20.

however, chose to restrict only expressive activities. One might reasonably argue that expressive activities, because they occupy a favored position in the constitutional firmament, should be exempt from even a comprehensive ban on outside income. Imposing a greater burden on speech than on other off-duty activities assumed to pose the same threat to the efficiency of the federal service is, at best, anomalous.

The fact that § 501 singles out expressive activity for special regulation heightens the Government's burden of justification. See *Minneapolis Star*, 460 U. S., at 583. As we noted last Term when reviewing the Federal Communications Commission's must-carry rules for cable television systems, "[w]hen the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' . . . It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broadcasting System*, 512 U. S., at 664. That case dealt with a direct regulation of communication by private entities, but its logic applies as well to the special burden § 501 imposes on the expressive rights of the multitude of employees it reaches. As Justice Brandeis reminded us, a "reasonable" burden on expression requires a justification far stronger than mere speculation about serious harms. "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. . . . To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced." *Whitney* v. *California*, 274 U. S. 357, 376 (1927) (concurring opinion).[21]

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[21] "[W]e have consistently given greater deference to government predictions of harm used to justify restriction of employee speech than to predictions of harm used to justify restrictions on the speech of the public at large." *Waters* v. *Churchill*, 511 U. S. 661, 673 (1994) (plurality opinion). However, the cases in which we have done so generally have in-

The Government has not persuaded us that § 501(b) is a reasonable response to the posited harms.

We also attach significance to the OGE regulations that limit the coverage of the statutory terms "appearance, speech or article." 5 CFR § 2636.203 (1994). The regulations exclude a wide variety of performances and writings that would normally appear to have no nexus with an employee's job, such as sermons, fictional writings, and athletic competitions, see *supra*, at 460, countermanding the Commissions' recommendation that an even more inclusive honoraria ban would be appropriate. See *supra*, at 458. The exclusions, of course, make the task of the OGE and agency ethics officials somewhat easier, but they "diminish the credibility of the Government's rationale" that paying lower level employees for speech entirely unrelated to their work jeopardizes the efficiency of the entire federal service. *City of Ladue*, 512 U. S., at 52. We recognize our obligation to defer to considered congressional judgments about matters such as appearances of impropriety, but on the record of this case we must attach greater weight to the powerful and realistic presumption that the federal work force consists of dedicated and honorable civil servants. The exclusions in the OGE regulations are more consistent with that presumption than

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volved isolated instances of speech that had already happened. See, *e. g.*, *Connick* v. *Myers*, 461 U. S. 138, 151–152 (1983). We deferred to the Government's predictions in upholding the Hatch Act, see *Public Workers* v. *Mitchell*, 330 U. S. 75, 100–101 (1947), but that statute's employee-protective rationale provided much stronger justification for a proscriptive rule than does the Government's interest in workplace efficiency. See *supra*, at 470–471. Deferring to the Government's speculation about the pernicious effects of thousands of articles and speeches yet to be written or delivered would encroach unacceptably on the First Amendment's protections. Cf. *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 498 (1985) (statute restricting political contributions violated First Amendment where "exchange of political favors for uncoordinated expenditures remain[ed] a hypothetical possibility and nothing more").

with the honoraria ban's dubious application not merely to policymakers, whose loss of honoraria was offset by a salary increase, but to all Executive Branch employees below grade GS–16 as well.

These anomalies in the text of the statute and regulations underscore our conclusion: The speculative benefits the honoraria ban may provide the Government are not sufficient to justify this crudely crafted burden on respondents' freedom to engage in expressive activities. Section 501(b) violates the First Amendment.

V

After holding § 501(b) invalid because it was not as carefully tailored as it should have been, the Court of Appeals approved a remedy that is itself arguably overinclusive. The relief granted by the District Court and upheld by the Court of Appeals enjoined enforcement of the entire honoraria ban as applied to the entire Executive Branch of the Government.[22] That injunction provides relief to senior executives who are not parties to this case. It also prohibits enforcement of the statute even when an obvious nexus exists between the employee's job and either the subject matter of his or her expression or the interest of the person paying for it. As an alternative to its request for outright reversal, the Government asks us to modify the judgment by upholding the statute as it applies, first, to employees not party to this action and, second, to situations in which a nexus is present.

For three reasons, we agree with the Government's first suggestion—that the relief should be limited to the parties before the Court. First, although the occasional case requires us to entertain a facial challenge in order to vindicate

[22] The Court of Appeals did not reach the ban's applications to employees of the Legislative and Judicial Branches because its analysis of the legislative history convinced it that, had Congress believed the ban unconstitutional as to the Executive Branch, it still would have applied the ban to the other branches. 990 F. 2d, at 1279.

a party's right not to be bound by an unconstitutional statute, see, *e. g., Secretary of State of Md.* v. *Joseph H. Munson Co.*, 467 U. S. 947, 965–967, and n. 13 (1984), we neither want nor need to provide relief to nonparties when a narrower remedy will fully protect the litigants. See *Board of Trustees of State Univ. of N. Y.* v. *Fox*, 492 U. S. 469, 484–485 (1989). In this case, granting full relief to respondents—who include all Executive Branch employees below grade GS–16—does not require passing on the applicability of § 501(b) to Executive Branch employees above grade GS–15, including those high-level employees who received a 25% salary increase that offsets the honoraria ban's disincentive to speak and write. Second, the Government conceivably might advance a different justification for an honoraria ban limited to more senior officials, thus presenting a different constitutional question than the one we decide today.[23] Our policy of avoiding unnecessary adjudication of constitutional issues, see *Ashwander* v. *TVA*, 297 U. S. 288, 346–347 (1936) (Brandeis, J., concurring), therefore counsels against determining senior officials' rights in this case. Third, as the Court of Appeals recognized, its remedy required it to tamper with the text of the statute,[24] a practice we strive to avoid.

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[23] The parties to whom the lower courts granted relief include a single GS–16 employee. See *supra*, at 461. The rationale we have set forth for our holding does not necessarily apply to him. However, the Government does not request, as part of its suggested alternative to outright reversal, that we reverse the Court of Appeals' judgment as to that one employee. Accordingly, we leave that part of the court's judgment intact.

[24] The Court of Appeals said: "We cannot, as a technical matter, achieve the intended severance simply by striking the words 'officer or employee' from § 501(b), as that would invalidate the ban beyond the executive branch. . . . However, given the far greater congressional interest in banning honoraria for the legislative and judicial branches, we think it a proper form of severance to strike 'officer or employee' from § 501(b) *except* in so far as those terms encompass members of Congress, officers and employees of Congress, judicial officers and judicial employees." 990 F. 2d, at 1279.

Our obligation to avoid judicial legislation also persuades us to reject the Government's second suggestion—that we modify the remedy by crafting a nexus requirement for the honoraria ban. We cannot be sure that our attempt to redraft the statute to limit its coverage to cases involving an undesirable nexus between the speaker's official duties and either the subject matter of the speaker's expression or the identity of the payor would correctly identify the nexus Congress would have adopted in a more limited honoraria ban. We cannot know whether Congress accurately reflected its sense of an appropriate nexus in the terse, 33-word parenthetical statement with which it exempted series of speeches and articles from the definition of honoraria in the 1992 amendment, see *supra*, at 460; in an elaborate, nearly 600-word provision with which it later exempted Department of Defense military school faculty and students from the ban;[25] or in neither. The process of drawing a proper nexus, even more than the defense of the statute's application to senior employees, would likely raise independent constitutional concerns whose adjudication is unnecessary to decide this case. Cf. *supra*, at 478. We believe the Court of Appeals properly left to Congress the task of drafting a narrower statute.[26]

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[25] See § 542 of the National Defense Authorization Act for Fiscal Year 1993, 106 Stat. 2413–2414.

[26] The dissent condemns our refusal to rewrite the statute. *Post*, at 501–503. It notes that, when we considered a challenge to a federal statute that banned expressive displays in the Supreme Court building and on the public sidewalks around it, we had no difficulty striking down the statute only as it applied to the public sidewalks. See *United States* v. *Grace*, 461 U. S. 171, 180–183 (1983). Drawing a line between a building and sidewalks with which we are intimately familiar, based on settled First Amendment principles, see *id.*, at 180, is a relatively simple matter. In contrast, drawing one or more lines between categories of speech covered by an overly broad statute, when Congress has sent inconsistent signals as to where the new line or lines should be drawn, involves a far more serious invasion of the legislative domain.

Insofar as the judgment of the Court of Appeals affirms the injunction against enforcement of § 501(b) against respondents, it is affirmed; insofar as it grants relief to parties not before the Court, it is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, concurring in the judgment in part and dissenting in part.

Although I agree that aspects of the honoraria ban run afoul of the First Amendment, I write separately for two reasons. First, I wish to emphasize my understanding of how our precedents, beginning with *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563 (1968), and culminating in its most recent application, *Waters* v. *Churchill*, 511 U. S. 661 (1994), direct the Court's conclusion. Second, I write to express my disagreement with the Court's remedy, which in my view paints with too broad a brush.

I

The time-tested *Pickering* balance, most recently applied in *Waters*, provides the governing framework for analysis of all manner of restrictions on speech by the government as employer. Under *Pickering*, the Court must balance "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the [government], as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U. S., at 568. In contrast to some of our prior decisions, this case presents no threshold question whether the speech is of public, or merely private, concern. Respondents challenge the ban as it applies to off-hour speech bearing no nexus to Government employment—speech that by definition does not relate to "internal office affairs" or the employee's status as an employee. Cf. *Connick* v. *Myers*, 461 U. S. 138, 149 (1983).

In setting out the employees' interests in this case, the Court draws a meaningful distinction between the *ex ante* prohibition of certain kinds of speech and the *ex post* punishment of discrete, unforeseeable disturbances. See *ante*, at 466–468. There is some force to the Court's observation, because *ex ante* rules, in contrast to *ex post* punishments, carry risks of overinclusiveness and underinclusiveness. Nevertheless, reliance on the *ex ante*/*ex post* distinction is not a substitute for the case-by-case application of *Pickering*. There are many circumstances in which the Government as employer is likely to prefer the codification of its policies as workplace rules (which, incidentally, provide notice to employees) to the ad hoc, on-the-job reactions that have been standard fare in many of our employment cases. In most such circumstances, the Government will be acting well within its bounds. I see little constitutional difference, for example, between a rule prohibiting employees from being "'rude to customers,'" see *Waters*, *supra*, at 673, and the upbraiding or sanctioning of an employee *post hoc* for isolated acts of impudence. To draw the line based on a distinction between *ex ante* rules and *ex post* punishments, in my view, overgeneralizes and threatens undue interference with "the government's mission as employer," 511 U. S., at 674.

Given the breadth and intrusiveness of the honoraria ban in this case, however, I agree with the Court that significant weight must be placed on the employees' side of the scale in the *Pickering* balance. We recognized in *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115 (1991), that the imposition of financial burdens may have a direct effect on incentives to speak. See also *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575, 585 (1983) (observing that the threat of burdensome taxes "can operate as effectively as a censor to check critical comment"). Although the honoraria ban certainly does not curtail *all* of the non-work-related speech

of the nearly two million members of respondent class, it doubtless inhibits some speech on matters of substantial public interest. In my view, the impact of the honoraria ban upon this class of employees' interests in speaking out as citizens, rather than as employees, cannot be gainsaid.

The Government advances two categories of interests in support of the honoraria ban. First, the Government submits its interests in promoting the efficiency of public service and in avoiding the appearance of impropriety created by abuse of the practice of receiving honoraria. We have credited these objectives as both salutary and significant on several occasions. See, *e. g., Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 210 (1982); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 788, n. 26 (1978); *Buckley* v. *Valeo*, 424 U. S. 1, 26–29 (1976). Although they lend support to the Government's efforts to put a stop to honoraria paid for work-related speech, these interests have less force in justifying a ban that prohibits honoraria paid for speech on matters wholly unrelated to the workplace. Perhaps recognizing this, the Government maintains that it has an additional interest in resisting evasion of its rule and sparing administrative resources. According to the Government, apparently innocuous payments may be made for illicit purposes, and the difficulty inherent in distinguishing the innocuous from the illicit mandates a broad prophylactic ban.

Balancing is difficult to undertake unless one side of the scale is relatively insubstantial. The Government argues that the Court should defer broadly to its determination that the benefits of the ban outweigh its costs. The Government relies on *Waters*, in which a plurality of the Court observed that "we have consistently given greater deference to government predictions of harm used to justify restriction of employee speech than to predictions of harm used to justify restrictions on the speech of the public at large." 511 U. S., at 673. But this principle has its limits, as the *Waters* plu-

rality went on to recognize. As the magnitude of intrusion on employees' interests rises, so does the Government's burden of justification. Cf. *Connick*, 461 U. S., at 150 ("[T]he State's burden in justifying a particular discharge varies depending upon the nature of the employee's expression"); *id.*, at 151–152 (finding "a wide degree of deference" appropriate where employee's speech touched only peripherally on matters of public concern). Thus, in *Waters*, the plurality noted that "[i]n many such situations the government may have to make a substantial showing that the speech is, in fact, likely to be disruptive before it may be punished." 511 U. S., at 674. This case presents one such situation.

The Court makes a persuasive case that the Government has made no such showing and that the Government's asserted interests are insufficiently weighty to justify a ban that curbs so much employee speech. See *ante*, at 470–477. In promulgating the ban, Congress relied on the reports of two blue-ribbon panels that suggested the prudence of a wide-ranging prohibition. Neither report noted any problems, anecdotal or otherwise, stemming from the receipt of honoraria by rank-and-file Executive Branch employees. Neither report, therefore, tends to substantiate the Government's administrative efficiency argument, which presumes that abuses may be so widespread as to justify a prophylactic rule. Congress assuredly was inspired by a worthy interest, but it made no effort to establish a connection between its interest and the large-scale inhibition of non-work-related speech by the respondent class. Our cases do not support the notion that the bare assertion of a laudable purpose justifies wide-ranging intrusions on First Amendment liberties. In *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548 (1973), perhaps the closest analogue to this case, we upheld provisions of the Hatch Act, 5 U. S. C. § 7324(a)(2), against a First Amendment challenge only after canvassing nearly a century of concrete experience with the evils of the political spoils system. Cf. *FCC* v. *League of Women Voters of Cal.*,

468 U. S. 364, 401, n. 27 (1984) (noting that the Hatch Act "evolved over a century of governmental experience with less restrictive alternatives that proved to be inadequate to maintain the effective operation of government").

I also agree with the Court that loopholes in the current ethical regime tend to cast doubt upon the gravity of the problem of honoraria abuse, or at least doubt upon the weight of the problem as perceived by Congress and the Office of Government Ethics (OGE). Cf. *City of Ladue* v. *Gilleo,* 512 U. S. 43, 52–53 (1994). Thus, in a provision that detracts seriously from the Government's administrative convenience rationale, the statute permits the author of a series of three speeches or publications (but not of a single speech or publication) to receive an honorarium if the series has no nexus to Government employment. See 5 U. S. C. App. § 505(3) (1988 ed., Supp. V). Under OGE regulations, employees may receive honoraria for poems, but not for speeches on poetry. See 5 CFR § 2636.203(d) (1992). Employees may be compensated for writing chapters in books, but not for writing the same piece if published as an article. *Ibid.* Congress is not required to address every aspect of a problem whenever it decides to act. But the patchwork nature of this regime might reasonably lead one to question the strength of the Government's asserted interests in a broad, prophylactic ban.

The Government, when it acts as employer, possesses substantial leeway; in appropriate circumstances, it may restrain speech that the Constitution would otherwise protect. The Government's prerogatives in this area stem from its public-serving mission as employer. As the plurality observed last year in *Waters,* "[w]hen someone who is paid a salary so that she will contribute to an agency's effective operation begins to do or say things that detract from the agency's effective operation, the government employer must have some power to restrain her." 511 U. S., at 675. In this case, however, the Government has exceeded the limits

of its latitude. The bare assertion of interest in a wide-ranging prophylactic ban here, without any showing that Congress considered empirical or anecdotal data pertaining to abuses by lower echelon Executive Branch employees, cannot suffice to outweigh the substantial burden on the 1.7 million affected employees. I agree with the Court that § 501 is unconstitutional to the extent that it bars this class of employees from receiving honoraria for expressive activities that bear no nexus to Government employment.

II

The class before us is defined by pay scale, not by its members' propensity to write articles without nexus to Government employment. As to any member of the class, the honoraria ban may have unconstitutional applications. But the ban may be susceptible of *constitutional* application to every member of the class, as well. We do not decide the question—a far harder case for respondents, in my view—whether it is constitutional to apply the honoraria ban to speech by this class that bears a relationship to Government employment. I believe that the Court overlooks this nuance when it enjoins all enforcement of § 501 against the class, any one of whose members may, in the future, receive honoraria for work-related activities. I would give respondents relief tailored to what they request: invalidation of the statute insofar as it applies to honoraria they receive for speech without nexus to Government employment. See Brief for Respondents 45–46 (noting that respondents' central aim "could also be achieved by a remedy similar to the one urged by the government—by holding the ban invalid as applied to respondents' writing and speaking activities [that] have no nexus to their federal employment").

I agree with the Court's assertion that the remedy in this case is properly limited to the parties before us. We have long characterized overbreadth analysis as "strong medicine," to be "employed by the Court sparingly and only as a

last resort." *Broadrick* v. *Oklahoma*, 413 U. S. 601, 613 (1973). Accordingly, we have observed that "[i]t is not the usual judicial practice, . . . nor do we consider it generally desirable, to proceed to an overbreadth issue unnecessarily." *Board of Trustees of State Univ. of N. Y.* v. *Fox*, 492 U. S. 469, 484–485 (1989); see also *New York* v. *Ferber*, 458 U. S. 747, 768 (1982) (footnotes omitted) ("By focusing on the factual situation before us, and similar cases necessary for development of a constitutional rule, we face 'flesh-and-blood' legal problems with data 'relevant and adequate to an informed judgment' "). The class before us, though defined broadly, consists of people who stand to benefit generally from the invalidation of this statute as applied. Because, as respondents freely admit, their central objective may be achieved by an as-applied challenge, see Brief for Respondents 45–46, I agree that the Court has little warrant to venture into the more difficult and uncertain overbreadth terrain.

Like the dissent, however, I believe that the Court imposes an unduly broad remedy when it enjoins enforcement of the entire provision as to respondent class. There is a commonsense appeal to the Government's argument that, having deemed a particular application of a statute unconstitutional, a court should not then throw up its hands and despair of delineating the area of unconstitutionality. See Brief for United States 38; Reply Brief for United States 15. On its face, the statute contains an exception for a "series" of speeches, appearances, and articles unless "the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government." 5 U. S. C. App. § 505(3) (1988 ed., Supp. V). I see no reason why the nexus principle underlying this general provision cannot serve as the appropriate remedial line.

The Court assumes that it would venture into judicial legislation were it to invalidate the provision as it applies to

no-nexus speech. But it is equally, if not more, inconsistent with congressional intent to strike a greater portion of the statute than is necessary to remedy the problem at hand. Although our jurisprudence in this area is hardly a model of clarity, this Court has on several occasions declared a statute invalid as to a particular application without striking the entire provision that appears to encompass it. In *United States* v. *Grace*, 461 U. S. 171 (1983), for example, the Court addressed the constitutionality of a federal statute making it unlawful to "parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds," or "to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement." 40 U. S. C. § 13k. Finding the statute's extension to public fora inadequately justified, the Court deemed the provision unconstitutional as applied to the sidewalks surrounding the Supreme Court. *Grace*, *supra*, at 183. In *Tennessee* v. *Garner*, 471 U. S. 1 (1985), the Court invalidated a state provision permitting police officers to use "'all the necessary means to effect the arrest'" of a fleeing or forcibly resisting defendant only insofar as it authorized the use of deadly force against an unarmed, nondangerous suspect. *Id.*, at 4, 22. In *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491 (1985), the Court invalidated a state obscenity statute "only insofar as the word 'lust' is taken to include normal interest in sex." *Id.*, at 504–505.

In *Brockett*, the Court declared: "[W]here the parties challenging the statute are those who desire to engage in protected speech that the overbroad statute purports to punish, or who seek to publish both protected and unprotected material[,] . . . [t]he statute may forthwith be declared invalid to the extent that it reaches too far, but otherwise left intact." *Id.*, at 504. Of course, we also noted that "[p]artial invalidation would be improper if it were contrary to legislative intent in the sense that the legislature had passed an inseverable Act or would not have passed it had it known the

challenged provision was invalid." *Id.*, at 506. In *Brockett* itself, the state statute contained a severability clause announcing that the remainder of the Act would continue in effect should "any provision of this act or its application to any person or circumstance" be held invalid. *Id.*, at 506, n. 14. Because the opinions in *Grace* and *Garner* made no mention of the existence of statutory severability clauses, these cases can perhaps best be explained as having involved implied severability. After delineating the range of the statute's impermissible applications, the Court implicitly concluded that the legislatures at issue—Congress in *Grace* and the Tennessee Legislature in *Garner*—would have preferred that the remainder of the statutes continue intact. These cases are entirely consistent with our severability precedents, in which we have held that "Congress' silence is just that—silence—and does not raise a presumption against severability." *Alaska Airlines, Inc.* v. *Brock*, 480 U. S. 678, 686 (1987).

As the Court of Appeals noted below, "[s]ection 501(b) does not contain a severability clause, and the legislative history yields no direct evidence of intent concerning severability." 990 F. 2d 1271, 1278 (CADC 1993). Under *Alaska Airlines*, this fact is by no means dispositive; the operative question instead is whether Congress would have promulgated § 501(b) had it known that it could not lawfully proscribe honoraria of employees below GS–16 for activities unrelated to Government employment. See 480 U. S., at 684; Stern, Separability and Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76, 82–83 (1937) (in dealing with the question of severable applications, the Court asks "whether the legislative body would intend the law to be given effect to whatever extent was constitutionally possible"). I think this question can be answered in the affirmative here. In severing this particular application, we leave the provision intact as to high-level Executive Branch employees and to the Legislative and Judicial Branches. Common sense suggests, and

legislative history confirms, that these Government employees, not the parties to this case, were the statute's principal targets. See, *e. g.*, 990 F. 2d, at 1278 (describing floor debates at which speakers continually referred to abuses by "Members of Congress" as the impetus for reform). As for employees below GS–16, it seems to me clear that Congress would have barred tax examiners from receiving honoraria for lectures on tax policy even if it could not bar the same examiners from receiving honoraria for articles on low-cholesterol cooking. The balance of the provision serves a laudable purpose and is capable of functioning independently once the improper application is excised. Cf. *Alaska Airlines*, *supra*, at 684.

In sum, I agree with the Court that § 501 is unconstitutional insofar as it bars the respondent class of Executive Branch employees from receiving honoraria for non-work-related speeches, appearances, and articles. In contrast to the Court, I would hold § 501 invalid only to that extent.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

I believe that the Court's opinion is seriously flawed in two respects. First, its application of the First Amendment understates the weight that should be accorded to the governmental justifications for the honoraria ban and overstates the amount of speech that actually will be deterred. Second, its discussion of the impact of the statute that it strikes down is carefully limited to only a handful of the most appealing individual situations, but when it deals with the remedy it suddenly shifts gears and strikes down the statute as applied to the entire class of Executive Branch employees below grade GS–16. I therefore dissent.

I

In 1991, in the aftermath of recommendations by two distinguished commissions, Congress adopted its present ban

on the receipt of honoraria. Congress defined an "honorarium" as

> "a payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee, excluding, any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed." 5 U. S. C. App. § 505(3) (1988 ed., Supp. V).

The ban neither prohibits anyone from speaking or writing, nor does it penalize anyone who speaks or writes; the only stricture effected by the statute is a denial of compensation.

In *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105 (1991), we evaluated the constitutionality of New York's "Son of Sam" law, which regulated an accused or convicted criminal's receipt of income generated by works that described his crime. *Id.*, at 108. We concluded that the law implicated First Amendment concerns because it "impose[d] a financial disincentive only on speech of a particular content." *Id.*, at 116. Because the "Son of Sam" law was content based, we required the State to demonstrate that the regulation was necessary to serve a compelling state interest and was narrowly drawn to achieve that end. *Id.*, at 118. We determined that the State had failed to meet its burden because the statute was overbroad. *Id.*, at 123.

Unlike the law at issue in *Simon & Schuster*, the honoraria ban is neither content nor viewpoint based. *Ante*, at 468; cf. *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989);

Renton v. *Playtime Theatres, Inc.*, 475 U. S. 41, 47–48 (1986). As a result, the ban does not raise the specter of Government control over the marketplace of ideas. Cf. *Simon & Schuster*, *supra*, at 116. To the extent that the honoraria ban implicates First Amendment concerns, the proper standard of review is found in our cases dealing with the Government's ability to regulate the First Amendment activities of its employees.

A public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. See *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568 (1968); *Connick* v. *Myers*, 461 U. S. 138, 140 (1983). We have emphasized, however, that "the State's interests as an employer in regulating the speech of its employees 'differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general.'" *Ibid.* (quoting *Pickering*, *supra*, at 568). The proper resolution of these competing interests requires "'a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'" 461 U. S., at 140 (quoting *Pickering*, *supra*, at 568). Just last Term, a plurality of the Court explained:

> "The key to First Amendment analysis of government employment decisions, then, is this: The government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer. The government cannot restrict the speech of the public at large just in the name of efficiency. But where the government is employing someone for the very purpose of effectively achieving its goals, such restrictions may well be appropriate." *Waters* v. *Churchill*, 511 U. S. 661, 675 (1994).

In conducting this balance, we consistently have given substantial weight to government employers' reasonable predictions of disruption, even when the speech involved was on a matter of public concern. *Id.*, at 673–674 (plurality opinion). As we noted in *Connick*, "'the Government, as an employer, must have wide discretion and control over the management of its personnel and internal affairs.'" 461 U. S., at 151 (quoting *Arnett* v. *Kennedy*, 416 U. S. 134, 168 (1974) (Powell, J., concurring in part and concurring in result)).

These principles are reflected in our cases involving governmental restrictions on employees' rights to engage in partisan political activity.[1] In *Public Workers* v. *Mitchell*, 330 U. S. 75 (1947), we examined § 9(a) of the Hatch Act, which prohibited officers and employees in the Executive Branch of the Federal Government, with exceptions, from taking "'any active part in political management or in political campaigns.'" *Id.*, at 78. We analyzed § 9(a)'s strictures as applied to the partisan political activities of an industrial employee at the United States Mint, and concluded that "[f]or regulation of employees it is not necessary that the act regulated be anything more than an act reasonably deemed by Congress to interfere with the efficiency of the public service." *Id.*, at 101. Despite the fact that § 9(a) barred three-million public employees from taking "effective part in campaigns that may bring about changes in their lives, their fortunes, and their happiness," *id.*, at 107 (Black, J., dissenting), we held that if in Congress' judgment "efficiency may be best obtained by prohibiting active participation by classi-

[1] In *Ex parte Curtis*, 106 U. S. 371 (1882), we upheld a statute that prohibited certain Government employees from giving or receiving money for political purposes to or from other Government employees. *Ibid.* The evident purpose of the statute was to "promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service." *Id.*, at 373. "The decisive principle was the power of Congress, within reasonable limits, to regulate, so far as it might deem necessary, the political conduct of its employees." *Public Workers* v. *Mitchell*, 330 U. S. 75, 96 (1947) (analyzing *Ex parte Curtis*, *supra*).

fied employees in politics as party officers or workers," there was no constitutional objection, *id.*, at 99.

More than 25 years later, we again addressed the constitutionality of § 9(a) of the Hatch Act. In *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548 (1973), we "unhesitatingly reaffirm[ed] the *Mitchell* holding," *id.*, at 556, because "neither the First Amendment nor any other provision of the Constitution invalidate[d] a law barring this kind of partisan political conduct by federal employees," *ibid.* We applied the balancing approach set forth in *Pickering* to the Hatch Act's sweeping limitation on partisan political activity, and determined that the balance struck by Congress was "sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act." 413 U. S., at 564. We concluded that "[p]erhaps Congress at some time w[ould] come to a different view of the realities of political life and Government service," but we were in no position to dispute Congress' current view of the matter. *Id.*, at 567.

Although protection of employees from pressure to perform political chores certainly was *a* concern of the Hatch Act, see *ante*, at 471, it was by no means the only, or even the most important, concern.[2] See *Letter Carriers*, *supra*, at 566. Rather, the Court recognized that a major thesis of the Hatch Act was that

> "to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees . . . not take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns, and not run for office on partisan political tickets. Forbidding activities like these will reduce the

[2] Prior to the Hatch Act, Congress had prohibited Civil Service employees from " 'us[ing] [their] official authority or influence to coerce the political action of any person or body.' " *Mitchell*, *supra*, at 79–80, n. 4 (quoting Civil Service Act, ch. 27, § 2, 22 Stat. 404).

> hazards to fair and effective government." 413 U. S., at 565.

The Court emphasized that "it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent." *Ibid.* Thus, the Hatch Act served as a safeguard to both the actual and perceived impartiality and effectiveness of the Federal Government. See *Mitchell*, *supra*, at 95–96; *Letter Carriers*, *supra*, at 564–567.

Applying these standards to the honoraria ban, I cannot say that the balance that Congress has struck between its interests and the interests of its employees to receive compensation for their First Amendment expression is unreasonable. Cf. *Letter Carriers*, *supra*, at 564; *Pickering*, 391 U. S., at 568.

The Court largely ignores the Government's foremost interest—prevention of impropriety and the appearance of impropriety—by focusing solely on the burdens of the statute as applied to several carefully selected Executive Branch employees whose situations present the application of the statute where the Government's interests are at their lowest ebb: a mail handler employed by the Postal Service who lectured on the Quaker religion; an aerospace engineer who lectured on black history; a microbiologist who reviewed dance performances; and a tax examiner who wrote articles about the environment. *Ante*, at 461–462. Undoubtedly these are members of the class, but they by no means represent the breadth of the class which includes all "'employee[s]' . . . below grade GS–16, who—but for 5 U. S. C. app. 501(b)—would receive 'honoraria', as defined in 5 U. S. C. app. 505(3)." App. 124–125. Nothing in the class certification limits the receipt of honoraria to the activities engaged in by the several employees discussed by the Court. See, *e. g.*,

ante, at 463, n. 6. This artificially narrow prism of class members, however, is the focus of the Court's entire First Amendment discussion.

The class definition speaks of anyone who would receive an honorarium but for the statute. App. 124–125. An unknown number of these individuals would receive honoraria where there is a nexus between their speech and their Government employment. There is little doubt that Congress reasonably could conclude that its interests in preventing impropriety and the appearance of impropriety in the federal work force outweigh the employees' interests in receiving compensation for expression that has a nexus to their Government employment. Cf. *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 210 (1982) ("The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized").

The Court relies on cases involving restrictions on the speech of private actors to argue that the Government is required to produce "evidence of misconduct related to honoraria in the vast rank and file of federal employees below grade GS–16." *Ante*, at 472; *ante*, at 475–476, and n. 21.[3] The Court recognizes, however, that we "'have consistently given greater deference to government predictions of harm used to justify restriction of employee speech than to predictions of harm used to justify restrictions on the speech of the public at large.'" *Ante*, at 475, n. 21 (quoting *Waters*, 511 U. S., at 673 (plurality opinion)).

[3] Ironically, the Court engages in unsupported factfinding to justify its conclusion. Thus, its First Amendment analysis is replete with observations such as "[w]ith few exceptions, the content of respondents' messages has nothing to do with their jobs and does not even arguably have any adverse impact on the efficiency of the offices in which they work," *ante*, at 465; and "[b]ecause the vast majority of the speech at issue in this case does not involve the subject matter of Government employment and takes place outside the workplace, the Government is unable to justify § 501(b) on the grounds of immediate workplace disruption." *Ante*, at 470.

Prior to enactment of the current honoraria ban, Congress was informed by two distinguished commissions that its previous limitations on honoraria were inadequate. The 1989 Quadrennial Commission recommended that "Congress enact legislation abolishing the practice of accepting honoraria in all three branches." Fairness for Our Public Servants: Report of the 1989 Commission on Executive, Legislative and Judicial Salaries vi (Dec. 1988). To Serve With Honor: Report of the President's Commission on Federal Ethics Law Reform (Mar. 1989) (hereinafter Wilkey Commission) echoed many of the Quadrennial Commission's concerns:

> "We recognize that speeches by federal officials can help inform the public or particular groups and may encourage interchange between the public and private sectors. Nevertheless, we can see no justification for perpetuating the current system of honoraria. *Honoraria paid to officials can be a camouflage for efforts by individuals or entities to gain the officials' favor.* The companies that pay honoraria and related travel expenses frequently deem these payments to be normal business expenses and likely believe that these payments enhance their access to public officials who receive them. . . .
>
> "Although we are aware of no special problems associated with receipt of honoraria within the judiciary, the Commission—in the interest of alleviating abuses in the legislative branch and in applying equitable limitations across the government—joins the Quadrennial Commission in recommending the enactment of legislation to ban the receipt of honoraria by all officials and employees in all three branches of government." *Id.*, at 35–36 (emphasis added).

The Wilkey Commission "recognize[d] that banning honoraria would have a substantial financial cost to many officials," *id.*, at 36, but determined that "the current ailment is

a serious one and that this medicine is no more bitter than is needed to cure the patient," *ibid.* The Wilkey Commission also was aware that its recommendations covered not only high-level federal employees,[4] but it "regard[ed] the current state of affairs as to honoraria in particular as unacceptable in the extreme, and believe[d] that [the Government could not] wait until an unspecified date in the future to end this harmful practice." *Id.*, at 38.[5]

The Court concedes that in light of the abuses of honoraria by its Members, Congress could reasonably assume that "payments of honoraria to judges or high-ranking officials in the Executive Branch might generate a similar appearance of improper influence," *ante*, at 473, but it concludes that Congress could not extend this presumption to federal em-

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[4] "The Commission also considered whether it was appropriate to impose a flat ban on outside earned income by all federal employees, or in the alternative, by the highest paid federal employees. In view of the diverse circumstances of federal employees, we felt that an across-the-board ban on outside earned income was unnecessary and too harsh." Wilkey Commission 38.

[5] The Court discusses a report of the General Accounting Office (GAO) to refute the argument that there is some evidence of misconduct related to honoraria in the rank and file of federal employees below grade GS–16. *Ante*, at 472, n. 18 (citing General Accounting Office, Report to the Chairman, Subcommittee on Federal Services, Post Office and Civil Service of the Senate Committee on Governmental Affairs, Employee Conduct Standards: Some Outside Activities Present Conflict-of-Interest Issues (Feb. 1992) (hereinafter GAO Report)). The GAO audited 11 agencies' controls over outside activities by employees. *Id.*, at 2. The GAO Report reflects that under the prior regime, some agencies exhibited "overly permissive approval policies," *ibid.*, and "five agencies approved some outside activities, such as speaking and consulting, that appeared to violate the standard of conduct prohibiting the use of public office for private gain," *ibid.* Nine of the eleven agencies reviewed had "approved outside activities in situations that involved potential violations of standard-of-conduct regulations or conflict-of-interest statutes." *Id.*, at 58. Nevertheless, the Court maintains that there is no evidence of even the appearance of impropriety by employees below grade GS–16. Cf. *ante*, at 472, n. 18.

ployees below grade GS–16. The theory underlying the Court's distinction—that federal employees below grade GS–16 have negligible power to confer favors on those who might pay to hear them speak or to read their articles—is seriously flawed. Tax examiners, bank examiners, enforcement officials, or any number of federal employees have substantial power to confer favors even though their compensation level is below grade GS–16.

Furthermore, we rejected the same distinction in *Public Workers* v. *Mitchell:*

> "There is a suggestion that administrative workers may be barred, constitutionally, from political management and political campaigns while the industrial workers may not be barred, constitutionally, without an act 'narrowly and selectively drawn to define and punish the specific conduct.' . . . Congress has determined that the presence of government employees, whether industrial or administrative, in the ranks of political party workers is bad. Whatever differences there may be between administrative employees of the government and industrial workers in its employ are differences in detail so far as the constitutional power under review is concerned. Whether there are such differences and what weight to attach to them, are all matters of detail for Congress." 330 U. S., at 102.

Congress was not obliged to draw an infinitely filigreed statute to deal with every subtle distinction between various groups of employees. See *Letter Carriers,* 413 U. S., at 556; *Mitchell, supra,* at 99.

The Court dismisses the Hatch Act experience as irrelevant, because it aimed to *protect* employees' rights, notably their right to free expression, rather than to restrict those rights. *Ante,* at 471. This is, indeed, a strange characterization of § 9(a) of the Hatch Act. It prohibited officers

and employees in the Executive Branch of the Federal Government from taking "'any active part in political management or in political campaigns.'" *Mitchell*, *supra*, at 78. The penalty for violation was dismissal from office. 330 U. S., at 79. Since the right to participate in a political campaign is surely secured in the abstract by the First Amendment, see, *e. g.*, *Buckley* v. *Valeo*, 424 U. S. 1, 15 (1976) *(per curiam)*, it can hardly be said that the Act *protected* the rights of workers who wished to engage in partisan political activity. One of the purposes of the Act was assuredly to free employees who did not wish to become engaged in politics from requests by their superiors to contribute money or time, but to the extent the Act protected these employees it undoubtedly limited the First Amendment rights of those who did wish to take an active part in politics.

The Government's related concern regarding the difficulties that would attach in administering a case-by-case analysis of the propriety of particular honoraria also supports the honoraria ban's validity. As we emphasized in *Waters*, "[t]he government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer." 511 U. S., at 675. Congress reasonably determined that the prior ethics regime, which required these case-by-case determinations, was inadequate. See App. 257 ("[T]he current state of affairs as to honoraria [is] unacceptable in the extreme"). As a subsequent 1992 GAO Report confirmed, individual ethics officers and various agencies gave differing interpretations to the nexus requirement, and some "approved activities that were questionable as to the appropriateness of accepting compensation." GAO Report, at 9.

The Court observes that because a nexus limitation is retained for a series of speeches, it cannot be that difficult to enforce. *Ante*, at 474. The exception that the honoraria ban

makes for a "series of appearances, speeches, or articles," far from undermining the statute's basic purpose, demonstrates that Congress was sensitive to the need for inhibiting as little speech consistent with its responsibility of ensuring that its employees perform their duties impartially and that there is no appearance of impropriety. Reply Brief for United States 12–13. One is far less likely to undertake a "series" of speeches or articles without being paid than he is to make a single speech or write a single article without being paid. Congress reasonably could have concluded that the number of cases where an employee wished to deliver a "series" of speeches would be much smaller than the number of requests to give individual speeches or write individual articles.

Unlike our prototypical application of *Pickering* which normally involves a response to the content of employee speech, the honoraria ban prohibits no speech and is unrelated to the message or the viewpoint expressed by the Government employee.[6] Cf. *Waters*, *supra*, at 664–666 (plurality opinion) (analyzing termination of an employee based upon statements critical of the employer); *Rankin* v. *McPherson*, 483 U. S. 378, 381–382 (1987) (analyzing termination of an employee based upon a comment about an attempted assassination of President Reagan); *Pickering*, 391 U. S., at 564 (analyzing termination of an employee based upon a letter critical of the school board). Furthermore, the honoraria ban exempts from its prohibition travel and other expenses re-

[6] The Court's fanciful example of an employer terminating an employee because of the disruptive effect of the employee's expression even where the employer agrees with the expression, *ante*, at 467, n. 11, does not detract from the fact that viewpoint and content neutrality are important factors in evaluating the reasonableness of the public employer's action. See, *e. g.*, *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 564 (1973) ("The restrictions so far imposed on federal employees are not aimed at particular parties, groups, or points of view. . . . Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls").

lated to employee speech. See 5 U. S. C. App. § 505(3) (1988 ed., Supp. V); 5 CFR § 2636.203 (1994). Because there is only a limited burden on respondents' First Amendment rights, Congress reasonably could have determined that its paramount interests in preventing impropriety and the appearance of impropriety in its work force justified the honoraria ban. See *Civil Service Comm'n* v. *Letter Carriers*, *supra; Public Workers* v. *Mitchell*, 330 U. S. 75 (1947).

There is a special irony to the Court's decision. In order to combat corruption and to regain the public's trust, the Court essentially requires Congress to resurrect a bureaucracy that it previously felt compelled to replace and to equip it with resources sufficient to conduct case-by-case determinations regarding the actual and apparent propriety of honoraria by all Executive Branch employees below grade GS–16. I believe that a proper application of the *Pickering* test to this content-neutral restriction on the receipt of compensation compels the conclusion that the honoraria ban is consistent with the First Amendment. See *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548 (1973).

II

One would expect, at the conclusion of its discussion in Parts I–IV, for the Court to hold the statute inapplicable on First Amendment grounds to persons such as the postal worker who lectures on the Quaker religion, and others of similar ilk. But the Court in Part V, in what may fairly be described as an O. Henry ending, holds the statute inapplicable to the entire class before the Court: all Executive Branch employees below grade GS–16 who would receive honoraria but for the statute. Under the Court's "as applied" remedy, § 501(b) would not apply regardless of whether there was a nexus between the compensation and the individual's employment. Even if I agreed that application of the honoraria ban to expressive activity unrelated to an employee's Gov-

ernment employment violated the First Amendment, I could not agree with the Court's remedy.[7]

In *United States* v. *Grace*, 461 U. S. 171 (1983), we analyzed the constitutionality of 40 U. S. C. § 13k (1982 ed.), as applied to the public sidewalks surrounding the Supreme Court. Section 13k prohibited, "among other things, the 'display [of] any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement' in the United States Supreme Court building and on its grounds." 461 U. S., at 172–173 (quoting § 13k). We concluded that there was insufficient justification for § 13k's prohibition against carrying signs, banners, or devices on the public sidewalks surrounding the building. *Id.*, at 183. As a remedy, we held that § 13k was "unconstitutional as applied to those sidewalks." *Ibid.;* see also *Edenfield* v. *Fane*, 507 U. S. 761, 763 (1993) (striking down a ban on solicitation by certified public accountants as applied to the "business context").

Although the Court limits its analysis to only those applications of the honoraria ban where there is no nexus between the honoraria and Government employment, the Court prohibits application of the honoraria ban to all Executive Branch employees below grade GS–16 even where there is a nexus between the honoraria and the employees' Government employment. *Ante*, at 479–480.[8] Even respondents acknowledge that the central aim of their litigation could "be achieved by a remedy similar to the one urged by the government—by holding the ban invalid as applied to respond-

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[7] Lost in the shuffle of the Court's remedy is Peter Crane, a GS–16 lawyer from the Nuclear Regulatory Commission, and a respondent before the Court. *Ante*, at 461. Although the rationale behind the Court's holding does not necessarily apply to Crane, see *ante*, at 478, n. 23, the Court's holding apparently does.

[8] Because the Court has rewritten the honoraria ban so that it no longer applies to Executive Branch employees below grade GS–16, I certainly could not condemn the Court for its refusal to rewrite the statute. Cf. *ante*, at 479, n. 26. I simply challenge the Court's failure to tailor its remedy to match its selective analysis.

ents' writing and speaking activities, which have no nexus to their federal employment." Brief for Respondents 45–46.

Consistent with our approach in *Grace*, *supra*, if I were to conclude that § 501(b) violated the First Amendment, I would affirm the Court of Appeals only insofar as its judgment affirmed the injunction against the enforcement of § 501(b) as applied to Executive Branch employees below grade GS–16 who seek honoraria that are unrelated to their Government employment.

Syllabus

HARRIS *v.* ALABAMA

CERTIORARI TO THE SUPREME COURT OF ALABAMA

No. 93–7659. Argued December 5, 1994—Decided February 22, 1995

Alabama law vests capital sentencing authority in the trial judge, but requires the judge to "consider" an advisory jury verdict. After convicting petitioner Harris of capital murder, the jury recommended that she be imprisoned for life without parole, but the trial judge sentenced her to death upon concluding that the statutory aggravating circumstance found and considered outweighed all of the mitigating circumstances. The Alabama Court of Criminal Appeals affirmed the conviction and sentence, rejecting Harris' argument that the capital sentencing statute is unconstitutional because it does not specify the weight the judge must give to the jury's recommendation and thus permits the arbitrary imposition of the death penalty. The Alabama Supreme Court affirmed.

Held: The Eighth Amendment does not require the State to define the weight the sentencing judge must give to an advisory jury verdict. Pp. 508–515.

(a) Because the Constitution permits the trial judge, acting alone, to impose a capital sentence, see, *e. g.*, *Spaziano* v. *Florida*, 468 U. S. 447, 465, it is not offended when a State further requires the judge to consider a jury recommendation and trusts the judge to give it the proper weight. Alabama's capital sentencing scheme is much like Florida's, except that a Florida sentencing judge is required to give the jury's recommendations "great weight," see *Tedder* v. *State*, 322 So. 2d 908, 910 (Fla.), while an Alabama judge is not. Although this Court has spoken favorably of the so-called *Tedder* standard, see, *e. g.*, *Spaziano*, *supra*, at 465, it has also made clear that the hallmark of the analysis is not the particular weight a State chooses to place upon the jury's advice, but whether the scheme adequately channels the sentencer's discretion so as to prevent arbitrary results, see, *e. g.*, 468 U. S., at 465. To impose the *Tedder* standard here would offend established principles governing the criteria to be considered by the sentencer, see, *e. g.*, *Franklin* v. *Lynaugh*, 487 U. S. 164, 179, and would place within constitutional ambit micromanagement tasks that properly rest within the State's discretion to administer its criminal justice system. Pp. 508–511.

(b) Harris' arguments for requiring that "great weight" be given to the jury's advice are unpersuasive. First, Alabama cases reversing death sentences for prejudicial errors committed before the advisory jury do not demonstrate that the jury's role is in fact determinative, but

simply that a sentence imposed by the judge is invalid if the recommendation on which it partially rests was rendered erroneously. Second, although statistics demonstrate that there have been only 5 cases in which an Alabama judge rejected an advisory verdict of death, compared to 47 instances where the judge imposed a death sentence over a jury recommendation of life, these numbers do not tell the whole story because they do not indicate, for example, how many cases in which a jury recommendation of life was adopted would have ended differently had the judge not been required to consider the jury's advice. Moreover, the statistics say little about whether the Alabama scheme is constitutional, a question which turns not solely on numerical tabulations of sentences, but rather on whether the penalties imposed are the product of properly guided discretion and not of arbitrary whim. Finally, apparent disparities in the weight given to jury verdicts in specific Alabama cases do not indicate that the judges have divergent understandings of the statutory requirement that such verdicts be considered; they simply reflect the fact that, in the subjective weighing process, the emphasis given to each decisional criterion must of necessity vary to account for the particular circumstances in each case. In any event, Harris does not show how these disparities affect her case. Pp. 511–515.

632 So. 2d 543, affirmed.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, JJ., joined. Stevens, J., filed a dissenting opinion, *post*, p. 515.

Ruth E. Friedman argued the cause for petitioner. With her on the brief was *Bryan A. Stevenson.*

P. David Bjurberg, Assistant Attorney General of Alabama, argued the cause for respondent. With him on the brief was *James H. Evans,* Attorney General.

Justice O'Connor delivered the opinion of the Court.

Alabama law vests capital sentencing authority in the trial judge, but requires the judge to consider an advisory jury verdict. We granted certiorari to consider petitioner's argument that Alabama's capital sentencing statute is unconstitutional because it does not specify the weight the judge must give to the jury's recommendation and thus permits arbitrary imposition of the death penalty.

I

A defendant convicted of capital murder in Alabama is entitled to a sentencing hearing before the trial jury, Ala. Code § 13A–5–46 (1994), unless jury participation is waived by both parties and approved by the court, § 13A–5–44. The State must prove statutory aggravating factors beyond a reasonable doubt and must disprove, by a preponderance of the evidence, any mitigating circumstance the defendant may proffer. § 13A–5–45(g). The jury then renders an advisory verdict. If it finds that aggravating factors, if any, outweigh mitigating circumstances, then the jury recommends death; otherwise, the verdict is life imprisonment without parole. § 13A–5–46(e). The jury may recommend death only if 10 jurors so agree, while a verdict of life imprisonment requires a simple majority. § 13A–5–46(f). The recommendation and vote tally are reported to the judge.

The judge then must consider all available evidence and file a written statement detailing the defendant's crime, listing specific aggravating and mitigating factors, and imposing a sentence. Section 13A–5–47(e) provides:

> "In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh the mitigating circumstances it finds to exist, and in doing so the trial court shall consider the recommendation of the jury contained in its advisory verdict, unless such a verdict has been waived pursuant to Section 13A–5–46(a) or 13A–5–46(g). While the jury's recommendation concerning sentence shall be given consideration, it is not binding upon the court."

If the defendant is sentenced to death, his conviction and sentence are automatically reviewed by an appellate court and, if affirmed, a writ of certiorari is granted by the Alabama Supreme Court as a matter of right. In addition to reviewing the record for errors, the appellate courts must

independently weigh aggravating and mitigating circumstances and determine whether the death penalty is disproportionate to sentences rendered in comparable cases. § 13A–5–53(b).

Petitioner Louise Harris was married to the victim, a deputy sheriff, and was also having an affair with Lorenzo McCarter. She asked McCarter to find someone to kill her husband, and McCarter to that end approached a co-worker, who refused and reported the solicitation to his supervisor. McCarter then found willing accomplices in Michael Sockwell and Alex Hood, who were paid $100 and given a vague promise of more money upon performance. On the appointed night, as her husband left for work on the night shift, Harris called McCarter on his beeper to alert him. McCarter and Hood sat in a car parked on a nearby street, and Sockwell hid in the bushes next to a stop sign. As the victim stopped his car at the intersection, Sockwell sprang forth and shot him, point blank, with a shotgun. Harris was arrested after questioning, and McCarter agreed to bear witness to the conspiracy in exchange for the prosecutor's promise not to seek the death penalty. McCarter testified that Harris had asked him to kill her husband so they could share in his death benefits, which totaled about $250,000.

The jury convicted Harris of capital murder. At the sentencing hearing, a number of witnesses attested to her good background and strong character. She was rearing seven children, held three jobs simultaneously, and participated actively in her church. The jury recommended, by a 7 to 5 vote, that she be imprisoned for life without parole. The trial judge then considered her sentence, finding the existence of one aggravating circumstance, that the murder was committed for pecuniary gain, and one statutory mitigator, that Harris had no prior criminal record. The trial judge also found as nonstatutory mitigating circumstances that Harris was a hardworking, respected member of her church and community. Noting that Harris had planned the crime

and financed its commission and stood to benefit the most from her husband's murder, the judge concluded that "the one statutory aggravating circumstance found and considered far outweighs all of the non-statutory mitigating circumstances, and that the sentence ought to be death." App. 7. In separate proceedings, all the conspirators were convicted of capital murder. McCarter and Hood received prison terms of life without parole; Sockwell, the triggerman, was sentenced to death after the trial judge rejected a jury recommendation, again by a 7 to 5 vote, of life imprisonment.

The Alabama Court of Criminal Appeals affirmed Harris' conviction and sentence. 632 So. 2d 503 (1992). It noted that Alabama's death penalty statute is based on Florida's sentencing scheme, which we have held to be constitutional, see *Spaziano* v. *Florida*, 468 U. S. 447, 457–467 (1984); *Proffitt* v. *Florida*, 428 U. S. 242, 252 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.). One difference is that jury recommendations are to be given "great weight" by the sentencing judge in Florida, see *Tedder* v. *State*, 322 So. 2d 908, 910 (Fla. 1975), whereas Alabama only requires the judge to "consider" the advisory verdict. The Court of Criminal Appeals rejected Harris' contention that Florida's so-called *Tedder* standard is constitutionally required, however. 632 So. 2d, at 538. As the statute prescribes, the court then reviewed the record for prejudicial errors and independently weighed the aggravating and mitigating circumstances. Finding no errors and concluding that death was the proper sentence, the court affirmed. *Id.*, at 542–543. The Alabama Supreme Court also affirmed, discussing an unrelated claim. 632 So. 2d 543 (1993). We granted certiorari. 512 U. S. 1234 (1994).

II

Alabama's capital sentencing scheme is much like that of Florida. Both require jury participation in the sentencing process but give ultimate sentencing authority to the

trial judge. Ala. Code § 13A–5–47(e) (1994); Fla. Stat. § 921.141(3) (1985). A sentence of death in both States is subject to automatic appellate review. Ala. Code § 13A–5–55 (1994); Fla. Stat. § 921.141(4) (1985). In Florida, as in Alabama, the reviewing courts must independently weigh aggravating and mitigating circumstances to determine the propriety of the death sentence, Ala. Code § 13A–5–53(b)(2) (1994); *Harvard* v. *State*, 375 So. 2d 833 (Fla.), cert. denied, 441 U. S. 956 (1977), and must decide whether the penalty is excessive or disproportionate compared to similar cases, Ala. Code § 13A–5–53(b)(3) (1994); *Williams* v. *State*, 437 So. 2d 133 (Fla. 1983), cert. denied, 466 U. S. 909 (1984).

The two States differ in one important respect. The Florida Supreme Court has opined that the trial judge must give "great weight" to the jury's recommendation and may not override the advisory verdict of life unless "the facts suggesting a sentence of death [are] so clear and convincing that virtually no reasonable person could differ." *Tedder* v. *State*, *supra*, at 910. The same deference inures to a jury recommendation of death. See *Grossman* v. *State*, 525 So. 2d 833, 839, n. 1 (Fla. 1988) (collecting cases). The Alabama capital sentencing statute, by contrast, requires only that the judge "consider" the jury's recommendation, and Alabama courts have refused to read the *Tedder* standard into the statute. See *Ex parte Jones*, 456 So. 2d 380, 382–383 (Ala. 1984). This distinction between the Alabama and Florida schemes forms the controversy in this case—whether the Eighth Amendment to the Constitution requires the sentencing judge to ascribe any particular weight to the verdict of an advisory jury.

We have held Florida's capital sentencing statute to be constitutional. See *Proffitt* v. *Florida*, *supra; Spaziano* v. *Florida*, *supra*. *In Spaziano*, we addressed the specific question whether Florida could, consistent with the Constitution, vest sentencing authority in the judge and relegate the jury to an advisory role. While acknowledging that sen-

tencing power resides with the jury in most States, we made clear that the "Eighth Amendment is not violated every time a State reaches a conclusion different from a majority of its sisters over how best to administer its criminal laws." *Id.*, at 464. We therefore rejected the contention that "placing the responsibility on a trial judge to impose the sentence in a capital case is so fundamentally at odds with contemporary standards of fairness and decency that Florida must be required to alter its scheme and give final authority to the jury to make the life-or-death decision." *Id.*, at 465; see also *Walton* v. *Arizona*, 497 U. S. 639, 648 (1990); *Clemons* v. *Mississippi*, 494 U. S. 738, 745 (1990).

Asserting that the death penalty serves no function in "rehabilitation," "incapacitation," or "deterren[ce]," JUSTICE STEVENS argues that a jury "should bear the responsibility to express the conscience of the community on the ultimate question of life or death in particular cases." *Post*, at 517, 518 (internal quotation marks omitted). What purpose is served by capital punishment and how a State should implement its capital punishment scheme—to the extent that those questions involve only policy issues—are matters over which we, as judges, have no jurisdiction. Our power of judicial review legitimately extends only to determine whether the policy choices of the community, expressed through its legislative enactments, comport with the Constitution. As we have noted elsewhere, "while we have an obligation to insure that constitutional bounds are not overreached, we may not act as judges as we might as legislators." *Gregg* v. *Georgia*, 428 U. S. 153, 174–175 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.).

In various opinions on the Florida statute we have spoken favorably of the deference that a judge must accord the jury verdict under Florida law. While rejecting an *ex post facto* challenge in *Dobbert* v. *Florida*, 432 U. S. 282, 294 (1977), we noted the "crucial protection" provided by the standard of *Tedder* v. *State*, *supra*, at 910. In the same fashion, in

dismissing Spaziano's argument that the *Tedder* standard was wrongly applied by the lower courts in his case, we stated:

> "This Court already has recognized the significant safeguard the *Tedder* standard affords a capital defendant in Florida. See *Dobbert* v. *Florida*, 432 U. S. 282, 294–295 (1977). See also *Proffitt*, 428 U. S., at 249 (joint opinion). We are satisfied that the Florida Supreme Court takes that standard seriously and has not hesitated to reverse a trial court if it derogates the jury's role." *Spaziano, supra,* at 465.

These statements of approbation, however, do not mean that the *Tedder* standard is constitutionally required. As we stated in *Spaziano* immediately following the passage quoted above: "Our responsibility, however, is not to second-guess the deference accorded the jury's recommendation in a particular case, but to ensure that the result of the process is not arbitrary or discriminatory." 468 U. S., at 465. We thus made clear that, our praise for *Tedder* notwithstanding, the hallmark of the analysis is not the particular weight a State chooses to place upon the jury's advice, but whether the scheme adequately channels the sentencer's discretion so as to prevent arbitrary results. See also *Proffitt*, 428 U. S., at 252–253 (joint opinion of Stewart, Powell, and STEVENS, JJ.).

Consistent with established constitutional law, Alabama has chosen to guide the sentencing decision by requiring the jury and judge to weigh aggravating and mitigating circumstances. Harris does not challenge this legislative choice. And she objects to neither the vesting of sentencing authority in the judge nor the requirement that the advisory verdict be considered in the process. What she seeks instead is a constitutional mandate as to how that verdict should be considered; relying on Florida's standard, she suggests that the judge must give "great weight" to the jury's advice.

We have rejected the notion that "a specific method for balancing mitigating and aggravating factors in a capital sentencing proceeding is constitutionally required." *Franklin* v. *Lynaugh*, 487 U. S. 164, 179 (1988). Equally settled is the corollary that the Constitution does not require a State to ascribe any specific weight to particular factors, either in aggravation or mitigation, to be considered by the sentencer. See, *e. g.*, *Blystone* v. *Pennsylvania*, 494 U. S. 299, 306–307 (1990); *Eddings* v. *Oklahoma*, 455 U. S. 104, 113–115 (1982); *Proffitt*, *supra*, at 257–258 (joint opinion of Stewart, Powell, and STEVENS, JJ.). To require that "great weight" be given to the jury recommendation here, one of the criteria to be considered by the sentencer, would offend these established principles and place within constitutional ambit micromanagement tasks that properly rest within the State's discretion to administer its criminal justice system. We therefore hold that the Eighth Amendment does not require the State to define the weight the sentencing judge must accord an advisory jury verdict.

Harris argues that, under Alabama law, the verdict is more than advisory and that the jury in fact enjoys the key sentencing role, subject only to review by the judge. For support, she points to Alabama cases reversing death sentences where prejudicial errors were committed before the advisory jury. See *Ex parte Williams*, 556 So. 2d 744, 745 (Ala. 1987). Unless the jury played a key role, so goes the argument, reversal would not be warranted because the sentencing judge was not exposed to the same harmful error. The flaw in this contention is that reversal is proper so long as the jury recommendation plays a role in the judge's decision, not necessarily a determinative one. If the judge must consider the jury verdict in sentencing a capital defendant, as the statute plainly requires, then it follows that a sentence is invalid if the recommendation upon which it partially rests was rendered erroneously. In *Espinosa* v. *Florida*, 505 U. S. 1079 (1992), the advisory jury, but not the sentencing

judge, was presented with an invalid aggravating factor. We summarily reversed the death sentence, explaining that "Florida has essentially split the weighing process in two. Initially, the jury weighs aggravating and mitigating circumstances, and the result of that weighing process is then in turn weighed within the trial court's process of weighing aggravating and mitigating circumstances." *Id.*, at 1082. Error is committed when the jury considers an invalid factor and its verdict is in turn considered by the judge: "This kind of indirect weighing of an invalid aggravating factor creates the same potential for arbitrariness as the direct weighing of an invalid aggravating factor, and the result, therefore, was error." *Ibid.* (citation omitted). Such consequential error attaches whenever the jury recommendation is considered in the process, not only when it is given great weight by the judge.

We have observed in the Florida context that permitting the trial judge to reject the jury's advisory verdict may afford capital defendants "a second chance for life with the trial judge," *Dobbert*, 432 U. S., at 296. In practice, however, Alabama's sentencing scheme has yielded some ostensibly surprising statistics. According to the Alabama Prison Project, there have been only 5 cases in which the judge rejected an advisory verdict of death, compared to 47 instances where the judge imposed a death sentence over a jury recommendation of life. Statistics compiled by the Alabama Prison Project (Nov. 29, 1994) (lodged with the Clerk of this Court). But these numbers do not tell the whole story. We do not know, for instance, how many cases in which a jury recommendation of life imprisonment is adopted would have ended differently had the judge not been required to consider the jury's advice. Without such a subjective look into the minds of the decisionmakers, the deceptively objective numbers afford at best an incomplete picture. Even assuming that these statistics reflect a true view of capital sentencing in Alabama, they say little about

whether the scheme is constitutional. That question turns not solely on a numerical tabulation of actual death sentences as compared to a hypothetical alternative, but rather on whether the penalties imposed are the product of properly guided discretion and not of arbitrary whim. If the Alabama statute indeed has not had the effect that we or its drafters had anticipated, such unintended results would be of little constitutional consequence. An ineffectual law is for the state legislature to amend, not for us to annul.

Harris draws our attention to apparent disparities in the weight given to jury verdicts in different cases in Alabama. For example, the trial judge here did not specify his reason for rejecting the jury's advice but in another case wrote that he accorded "great weight" to the recommendation, *State* v. *Coral*, No. CC–88–741 (Montgomery Cty., June 26, 1992), Alabama Capital Sentencing Orders, p. 72 (lodged with the Clerk of this Court). In rejecting the jury verdict, other judges have commented variously that there was a "reasonable basis" to do so, *State* v. *Parker*, No. CC–88–105 (Colbert Cty., Dec. 3, 1991), Alabama Capital Sentencing Orders, at 408, that the verdict was "unquestionably a bizarre result," *Ex parte Hays*, 518 So. 2d 768, 777 (Ala. 1986), or that "if this were not a proper case for the death penalty to be imposed, a proper case can scarcely be imagined," *State* v. *Frazier*, No. CC–85–3291 (Mobile Cty., July 31, 1990), Alabama Capital Sentencing Orders, at 139. Juxtaposing these statements, Harris argues that the Alabama statute permits judges to reject arbitrarily the advisory verdict, thereby abusing their sentencing discretion.

But these statements do not indicate that the judges have divergent understandings of the statutory requirement that the jury verdicts be considered; they simply illustrate how different judges have "considered" the jury's advice. There is no reason to expect that the advisory verdicts will be treated uniformly in every case. The Alabama statute provides that the weighing process "shall not be defined to mean

a mere tallying of aggravating and mitigating circumstances for the purpose of numerical comparison," Ala. Code § 13A–5–48 (1994), which is no less than what the Constitution requires, see *Proffitt*, 428 U. S., at 258 (joint opinion of Stewart, Powell, and STEVENS, JJ.). The disparate treatment of jury verdicts simply reflects the fact that, in the subjective weighing process, the emphasis given to each decisional criterion must of necessity vary in order to account for the particular circumstances of each case. See *Eddings* v. *Oklahoma*, 455 U. S., at 112 ("[A] consistency produced by ignoring individual differences is a false consistency"). In any event, Harris does not show how the various statements affect her case. She does not bring an equal protection claim, and she does not contest the lower courts' conclusion that her sentence is proportionate to that imposed in similar cases. The sentiments expressed in unrelated cases do not render her punishment violative of the Eighth Amendment.

The Constitution permits the trial judge, acting alone, to impose a capital sentence. It is thus not offended when a State further requires the sentencing judge to consider a jury's recommendation and trusts the judge to give it the proper weight. Accordingly, we affirm the judgment of the Alabama Supreme Court.

It is so ordered.

JUSTICE STEVENS, dissenting.

Alabama's capital sentencing statute is unique. In Alabama, unlike any other State in the Union, the trial judge has unbridled discretion to sentence the defendant to death—even though a jury has determined that death is an inappropriate penalty, and even though no basis exists for believing that any other reasonable, properly instructed jury would impose a death sentence. Even if I accepted the reasoning of *Spaziano* v. *Florida*, 468 U. S. 447, 457–465 (1984), which I do not, see *id.*, at 467 (STEVENS, J., concurring in part and dissenting in part), I would conclude that the com-

plete absence of standards to guide the judge's consideration of the jury's verdict renders the statute invalid under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment.

I

Our opinions have repeatedly emphasized that death is a fundamentally different kind of penalty from any other that society may impose.[1] State legislatures' assignments of sentencing authority exemplify the distinction. In every State except Oklahoma, the trial judge rather than the jury is responsible for sentencing in noncapital cases. The opposite consensus, however, prevails in capital cases. In 33 of the 37 States that authorize capital punishment, the jury participates in the sentencing decision. In 29 of those States, the jury's decision is final; in the other 4—Alabama, Delaware, Florida, and Indiana—the judge has the power to override the jury's decision. Russell, The Constitutionality of Jury Override in Alabama Death Penalty Cases, 46 Ala. L. Rev. 5, 9–10 (1994). Thus, 33 of the 37 state legislatures that have enacted death penalty statutes have given the jury sentencing responsibilities that differ from the prevailing view of the jury's role in noncapital cases. The Federal Government also provides for jury sentencing in capital cases.[2]

These legislative decisions reflect the same judgment expressed in England in 1953 after a 4-year study by the Royal Commission on Capital Punishment:

> "The question whether there are grounds for relieving the prisoner from the liability to be sentenced to death

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[1] See, *e. g.*, *Lankford* v. *Idaho*, 500 U. S. 110, 125 (1991); *Clemons* v. *Mississippi*, 494 U. S. 738, 750, n. 4 (1990); *Booth* v. *Maryland*, 482 U. S. 496, 509, n. 12 (1987); *Solem* v. *Helm*, 463 U. S. 277, 289, 294 (1983); *Enmund* v. *Florida*, 458 U. S. 782, 797 (1982); *Beck* v. *Alabama*, 447 U. S. 625, 637–638 (1980); *Gardner* v. *Florida*, 430 U. S. 349, 357–358 (1977) (plurality opinion).

[2] See Violent Crime Control and Law Enforcement Act of 1994, 108 Stat. 1966–1967.

> is a question of quite a different order from the question whether he should serve a shorter or a longer term of imprisonment, and involves much deeper moral and social issues. The lesson of history is that, when a criminal offence is punishable by death, in practice juries will not confine their attention to the issue of guilt and ignore the sentence which conviction entails. In the past, British juries, by perverse verdicts and by petitions, did at least as much as the campaigns of the reformers to bring the law into conformity with the developing moral conceptions of the community, especially in the field of capital punishment. It may well be argued that the men and women of the jury may be regarded as a microcosm of the community, who will reflect the changing attitudes of society as a whole to the infliction of capital punishment, and that there could therefore be no more appropriate body to decide whether the fellow-citizen whom they have found guilty of murder should suffer the penalty of death prescribed by the law or should receive a lesser punishment." Royal Commission on Capital Punishment 1949–1953, Report 200 (1953).

In ordinary, noncapital sentencing decisions, judges consider society's interests in rehabilitating the offender, in incapacitating him from committing offenses in the future, and in deterring others from committing similar offenses. In capital sentencing decisions, however, rehabilitation plays no role; incapacitation is largely irrelevant, at least when the alternative of life imprisonment without possibility of parole is available;[3] and the assumption that death provides a greater deterrent than other penalties is unsupported by

[3] In *Gregg* v. *Georgia*, 428 U. S. 153 (1976), although we noted that incapacitation had been advanced as a rationale for upholding the death penalty, *id.*, at 183, n. 28 (joint opinion of Stewart, Powell, and STEVENS, JJ.), the joint opinion placed no reliance on incapacitation as an acceptable justification. See *California* v. *Ramos*, 463 U. S. 992, 1023, and n. 9 (1983) (Marshall, J., dissenting).

persuasive evidence.[4] Instead, the interest that we have identified as the principal justification for the death penalty is retribution: "[C]apital punishment is an expression of society's moral outrage at particularly offensive conduct." *Gregg* v. *Georgia*, 428 U. S. 153, 183 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.); see Gillers, Deciding Who Dies, 129 U. Pa. L. Rev. 1, 54–56 (1980). A capital sentence expresses the community's judgment that no lesser sanction will provide an adequate response to the defendant's outrageous affront to humanity. *Gregg*, 428 U. S., at 184. A representative cross section of the community should bear the responsibility to "express the conscience of the community on the ultimate question of life or death" in particular cases. *Witherspoon* v. *Illinois*, 391 U. S. 510, 519 (1968) (footnote omitted). An expression of community outrage carries the legitimacy of law only if it rests on fair and careful consideration, as free as possible from passion or prejudice. Although the public's apparent zeal for legislation authorizing capital punishment might cast doubt on citizens' capacity to apply such legislation fairly, I am convinced that our jury system provides reliable insulation against the passions of the polity. Voting for a political candidate who vows to be "tough on crime" differs vastly from voting at the conclusion of an actual trial to condemn a specific individual to death. Jurors' responsibilities terminate when their case ends; they answer only to their own consciences; they rarely have any concern about possible reprisals after their work is done. More importantly, they focus their attention on a particular case involving the fate of one fellow citizen, rather than on a generalized remedy for a global category of faceless violent criminals who, in the abstract, may appear unworthy of life. A jury verdict expresses a collective judg-

[4] See, *e. g.*, *Spaziano* v. *Florida*, 468 U. S. 447, 478–479 (1984) (STEVENS, J., concurring in part and dissenting in part); H. Zeisel, The Limits of Law Enforcement 60–63 (1982); Gillers, Deciding Who Dies, 129 U. Pa. L. Rev. 1, 49–54 (1980).

ment that we may fairly presume to reflect the considered view of the community.

The Constitution does not permit judges to determine the guilt or innocence of an accused without her consent. The same reasons that underlie that prohibition apply to life-or-death sentencing decisions. The Framers of our Constitution "knew from history and experience that it was necessary to protect . . . against judges too responsive to the voice of higher authority." *Duncan* v. *Louisiana*, 391 U. S. 145, 156 (1968). As we explained in *Duncan:*

> "[T]he jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence." *Ibid.*

Community participation is as critical in life-or-death sentencing decisions as in those decisions explicitly governed by the constitutional guarantee of a jury trial. The "higher authority" to whom present-day capital judges may be "too responsive" is a political climate in which judges who covet higher office—or who merely wish to remain judges—must constantly profess their fealty to the death penalty.[5] Ala-

[5] This climate is evident in political attacks on candidates with reservations about the death penalty. For example, challengers for United States Senate seats in the recent elections routinely savaged their incumbent opponents for supporting federal judicial nominees perceived to be "soft" on capital punishment. See, *e. g.*, Lehigh & Phillips, Romney, Kennedy Air Another Round of Attack Ads, Boston Globe, Oct. 31, 1994, Metro/Region section, p. 21; Lesher, Huffington Attacks Rival on Judges, Los Angeles Times, Sept. 30, 1994, p. A3; Political Notebook, Memphis Commercial Appeal, Oct. 8, 1994, p. 3B (Frist-Sasser race). Some Senators have also made the death penalty a litmus test in judicial confirmation

bama trial judges face partisan election every six years. Ala. Code § 17–2–7 (1987). The danger that they will bend to political pressures when pronouncing sentence in highly publicized capital cases is the same danger confronted by judges beholden to King George III.

II

In my opinion, total reliance on judges to pronounce sentences of death is constitutionally unacceptable. See *Walton* v. *Arizona*, 497 U. S. 639, 708 (1990) (STEVENS, J., dissenting). While the addition of an advisory jury may ameliorate concerns about judicial sentencing in some cases, more often that addition makes the scheme much worse, especially when, as in Alabama, the jury's verdict carries no necessary weight.

If Alabama's statute expressly provided for a death sentence upon a verdict by *either* the jury or the judge, I have no doubt it would violate the Constitution's command that no defendant "be twice put in jeopardy of life or limb." U. S. Const., Amdt. 5; cf. *Bullington* v. *Missouri*, 451 U. S. 430, 444–446 (1981). The Alabama scheme has the same practical effect. As the Court recognizes, *ante*, at 513, Alabama trial judges almost always adopt jury verdicts recommending death; a prosecutor who wins before the jury can be confident that the defendant will receive a death sentence. A prosecutor who loses before the jury gets a second, fresh opportunity to secure a death sentence. She may present the judge with exactly the same evidence and arguments

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hearings. See, *e. g.*, Lewis, G. O. P. To Challenge Judicial Nominees Who Oppose Death Penalty, N. Y. Times, Oct. 15, 1993, p. A26; Vick, Barkett's Foes Show Strength Even in Defeat, St. Petersburg Times, Mar. 18, 1994, p. 5B. As one commentator has written: "Most experts on penal systems agree that capital punishment does not deter capital crime. But the public believes that it does, and politicians have been switching longstanding positions to accommodate that view. . . . This . . . is the democratic system." Wills, Read Polls, Heed America, N. Y. Times, Nov. 6, 1994, section 6 (magazine), p. 48.

that the jury rejected. The defendant's life is twice put in jeopardy, once before the jury and again in the repeat performance before a different, and likely less sympathetic, decisionmaker. A scheme that we assumed would "provid[e] capital defendants with more, rather than less, judicial protection," *Dobbert* v. *Florida*, 432 U. S. 282, 295 (1977),[6] has perversely devolved into a procedure that requires the defendant to stave off a death sentence at each of two *de novo* sentencing hearings.

Not surprisingly, given the political pressures they face, judges are far more likely than juries to impose the death penalty. This has long been the case,[7] and the recent experience of judicial overrides confirms it. Alabama judges have vetoed only five jury recommendations of death, but they have condemned 47 defendants whom juries would have spared.[8] The Court acknowledges this "ostensibly surpris-

[6] I have always believed the legislative decision to authorize an override was intended to protect the defendant from the risk of an erroneous jury decision to impose the death penalty. See *Proffitt* v. *Florida*, 428 U. S. 242, 252–253 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.). States have in the past argued that the override would serve to protect defendants. See, *e. g.*, Brief for Respondent in *Dobbert* v. *Florida*, O. T. 1976, No. 76–5306, p. 17 ("It cannot be said that Florida's new [override] procedure reduces the possibility of mercy. In fact, it is enhanced").

[7] See H. Zeisel, Some Data on Juror Attitudes Towards Capital Punishment 37–50 (1968).

[8] Statistics from Florida and Indiana confirm that judges tend to override juries' life recommendations far more often than their death recommendations. Between 1972 and early 1992, Florida trial judges imposed death sentences over 134 juries' recommendations of life imprisonment. See Radelet and Mello, Death-to-Life Overrides: Saving the Resources of the Florida Supreme Court, 20 Fla. St. U. L. Rev. 195, 196 (1992). During the same period, Florida judges overrode only about 51 death recommendations. *Id.*, at 210–211. In Indiana, between 1980 and early 1994, judges had used overrides to impose eight death sentences and only four life sentences. Memorandum from Paula Sites, Legal Director, Indiana Public Defender Council, to Supreme Court Library (Feb. 8, 1994) (lodged with the Clerk of this Court). The even more extreme disparity in Alabama may well be attributable to Alabama's unique failure to adopt the

ing" fact, *ante,* at 513, but dismisses it as inconclusive, because "[w]e do not know . . . how many cases in which a jury recommendation of life imprisonment is adopted would have ended differently had the judge not been required to consider the jury's advice," *ibid.* This attempt to shrug off the reality of Alabama capital sentencing misses the point. Perhaps Alabama judges would be even more severe, and their sentences even more frequently inconsistent with the community's sense of justice, if Alabama provided for no jury verdicts at all. But the proper frame of reference is not a sentencing scheme with no jury; rather, it is a sentencing scheme with no judge—the scheme maintained by 29 of 37 States with capital punishment. In that comparison, the fact that Alabama trial judges have overridden more than nine juries' life recommendations for every vetoed death recommendation is conclusive indeed. Death sentences imposed by judges, especially against jury recommendations, sever the critical "link between contemporary community values and the penal system." *Witherspoon*, 391 U. S., at 519, n. 15. They result in the execution of defendants whom the community would spare.

Death sentences imposed by judges over contrary jury verdicts do more than countermand the community's judgment: They express contempt for that judgment. Judicial overrides undermine the jury system's central tenet that "sharing in the administration of justice is a phase of civic responsibility." *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217, 227 (1946) (Frankfurter, J., dissenting). Overrides also sacrifice the legitimacy of jury verdicts, at potentially great cost. Whereas the public presumes that a death sentence imposed by a jury reflects the community's judgment that death is the appropriate response to the defendant's crime, the same presumption does not attach to a lone government

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more stringent standard that governs overrides in the other States. See *infra*, at Part III.

official's decree. Indeed, government-sanctioned executions unsupported by judgments of a fair cross section of the citizenry may undermine respect for the value of human life itself and unwittingly increase tolerance of killing.[9] As Justice Brandeis reminded us, "Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious." *Olmstead* v. *United States*, 277 U. S. 438, 485 (1928) (dissenting opinion). Unless the imposition of the death penalty consistently rests on the most scrupulous regard for fair procedure and the application of accepted community standards, it may well teach a lesson that aggravates the very dangers it was intended to deter.

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[9] Research has provided evidence that executions actually increase the level of violence in society. For example, a controlled, 56-year study in New York State revealed that an average of two additional homicides occurred in the month following an execution. See Bowers & Pierce, Deterrence or Brutalization: What Is the Effect of Executions?, 26 Crime and Delinquency 453 (1980). A 10-year study in California produced less conclusive but similar results. See Graves, The Deterrent Effect of Capital Punishment in California, in The Death Penalty in America 322, 327–331 (H. Bedau ed. 1967). Experienced prosecutors recognize this reality. Morgenthau, What Prosecutors Won't Tell You, N. Y. Times, Feb. 7, 1995, p. A25 ("[B]y their brutalizing and dehumanizing effect on society, executions cause more murders than they prevent"). A court's unilateral decree of a death sentence surely magnifies the risk of such perverse consequences. This Court's recent refusal to stay an execution provides an illustration. After a jury had sentenced the defendant, the prosecutor announced that a different person had pulled the trigger. Nevertheless, the State executed the condemned man without giving him a chance to present this information to a jury. See *Jacobs* v. *Scott*, *post*, at 1067 (STEVENS, J., dissenting from denial of stay of execution). Six days later, a news account described death penalty supporters' lack of concern about the danger of executing innocent people. "One [proponent of capital punishment] likened the death penalty to a childhood vaccine approved by the government with full knowledge that at least one child, somewhere, would die from an adverse reaction." Verhovek, When Justice Shows Its Darker Side, N. Y. Times, Jan. 8, 1995, section 4, p. 6.

III

If the Court correctly held in *Spaziano* that the Constitution's concerns with regularity and fairness do not bar judges from imposing death sentences over contrary jury verdicts, one would at least expect the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to require that such schemes maintain strict standards to regularize and constrain the judge's discretion. The Court today refuses to impose any standard, holding that to do so would be "micromanagement." *Ante*, at 512. But this case involves far more than a mundane administrative detail.

Alabama stands alone among the States in its refusal to constrain its judges' power to condemn defendants over contrary jury verdicts. The Florida statute upheld in *Spaziano*, as interpreted by the Florida Supreme Court, requires the prosecutor to satisfy a more stringent standard before the judge than before the jury, prohibiting a judicial override unless the facts supporting the death sentence are "so clear and convincing that virtually no reasonable person could differ." *Tedder* v. *State*, 322 So. 2d 908, 910 (1975). If that standard is satisfied, a judge may rationally presume that the jury's verdict did not fairly reflect the judgment of the community. Delaware and Indiana impose similar requirements for overrides. See *Pennell* v. *State*, 604 A. 2d 1368, 1377–1378 (Del. 1992); *Martinez-Chavez* v. *State*, 534 N. E. 2d 731, 735 (Ind. 1989).

We have repeatedly cited the *Tedder* standard with approval, suggesting that the Constitution requires such a constraint on a jury override provision. See *Spaziano*, 468 U. S., at 465; *Dobbert* v. *Florida*, 432 U. S., at 294–295; *Proffitt* v. *Florida*, 428 U. S. 242, 252 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.). Today the Court dismisses those statements. After Justice Blackmun stated in his opinion for the Court in *Spaziano* that "[w]e are satisfied that the Florida Supreme Court takes *[Tedder]* seriously

and has not hesitated to reverse a trial court if it derogates the jury's role," he added, as the majority notes, that "[o]ur responsibility, however, is not to second-guess the deference accorded the jury's recommendation in a particular case, but to ensure that the result of the process is not arbitrary or discriminatory." 468 U. S., at 465. The majority reads this second statement to mean that "the hallmark of the analysis is not the particular weight a State chooses to place upon the jury's advice." *Ante,* at 511. That reading is overly ambitious at best. The question whether the Constitution requires the *Tedder* rule goes squarely to "the result of the process." The *Spaziano* Court declined to upset the result in the "particular case" before it based on the way the Florida Supreme Court had applied *Tedder* in that case. It did not announce that it would have reached the same result had Florida abjured *Tedder* entirely; rather, it appears to have made *Tedder*'s role in the Florida scheme a necessary consideration in its evaluation of Florida overrides. The Court's reading of Justice Blackmun's opinion in *Spaziano* is tenable, but a more likely reading is that his opinion meant to echo our previous suggestions that a jury override scheme is unconstitutional without *Tedder.*

I would follow those suggestions and recognize *Tedder* as a constitutional imperative. As I have explained, an unfettered judicial override of a jury verdict for life imprisonment cannot be taken to represent the judgment of the community. A penalty that fails to reflect the community's judgment that death is the appropriate sentence constitutes cruel and unusual punishment under our reasoning in *Gregg.* Remarkably, the Court attempts to bolster its holding by citing our reversal of a Florida death sentence for error before the advisory jury. *Ante,* at 512–513, citing *Espinosa* v. *Florida,* 505 U. S. 1079 (1992). The Court forgets that the difference between Florida and Alabama is precisely what is at stake in this case. The Constitution compelled *Espinosa* for the

same ultimate reason it compels *Tedder:* The community's undistorted judgment must decide a capital defendant's fate.[10] Proper attention to *Espinosa* would lead the Court to reject the conclusion it reaches today.

In reaching its result the Court also fails to consider our longstanding principle that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop* v. *Dulles,* 356 U. S. 86, 101 (1958). The *Spaziano* Court held that the rejection of capital jury sentencing by all but seven States, and of capital jury overrides by all but (at that time) three, did not demonstrate an "evolving standard" disfavoring overrides. *Spaziano,* 468 U. S., at 463–464. Surely, however, the rejection of standardless overrides by every State in the Union but Alabama is a different matter. Cf. *Enmund* v. *Florida,* 458 U. S. 782, 789–793 (1982).

The Court today casts a cloud over the legitimacy of our capital sentencing jurisprudence. The most credible justification for the death penalty is its expression of the community's outrage. To permit the State to execute a woman in spite of the community's considered judgment that she should not die is to sever the death penalty from its only legitimate mooring. The absence of any rudder on a judge's free-floating power to negate the community's will, in my judgment, renders Alabama's capital sentencing scheme fundamentally unfair and results in cruel and unusual punishment. I therefore respectfully dissent.

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[10] Of course, the majority is correct to reaffirm the importance of remedying prejudicial error before advisory juries. When the Court next has occasion to review an Alabama jury-related error and the sentencing judge has not revealed the degree of her reliance on the jury's advice, the majority apparently will be content to presume that the error, and the jury decision it tainted, mattered to the result.

Syllabus

JEROME B. GRUBART, INC. *v.* GREAT LAKES DREDGE & DOCK CO. ET AL.

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

No. 93–762. Argued October 12, 1994—Decided February 22, 1995*

After the Chicago River flooded a freight tunnel under the river and the basements of numerous buildings, petitioner corporation and other victims brought tort actions in state court against respondent Great Lakes Dredge & Dock Co. and petitioner Chicago. They claimed that in the course of driving piles from a barge into the riverbed months earlier, Great Lakes had negligently weakened the tunnel, which had been improperly maintained by the city. Great Lakes then filed this action, invoking federal admiralty jurisdiction and seeking, *inter alia*, the protection of the Limitation of Vessel Owner's Liability Act. That Act would permit the admiralty court to decide whether Great Lakes had committed a tort and, if so, to limit its liability to the value of the barges and tug involved if the tort was committed without the privity or knowledge of the vessels' owner. The District Court dismissed the suit for lack of admiralty jurisdiction, but the Court of Appeals reversed.

Held: The District Court has federal admiralty jurisdiction over Great Lakes's Limitation Act suit. Pp. 531–548.

(a) A party seeking to invoke such jurisdiction over a tort claim must satisfy conditions of both location and connection with maritime activity. In applying the location test, a court must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water. 46 U. S. C. App. § 740. In applying the connection test, a court first must assess the "general features of the type of incident involved" to determine if the incident has "a potentially disruptive impact on maritime commerce." *Sisson* v. *Ruby*, 497 U. S. 358, 363, 364, n. 2. If so, the court must determine whether the character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. *Id.*, at 365, 364, and n. 2. Pp. 531–534.

(b) The location test is readily satisfied here. The alleged tort was committed on a navigable river, and petitioners do not seriously dispute that Great Lakes's barge is a "vessel" for admiralty tort purposes.

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*Together with No. 93–1094, *City of Chicago* v. *Great Lakes Dredge & Dock Co. et al.*, also on certiorari to the same court.

There is no need or justification for imposing an additional jurisdictional requirement that the damage done must be close in time and space to the activity that caused it. A nonremoteness requirement is not supported by the Extension of Admiralty Jurisdiction Act's language, and the phrase "caused by" used in that Act indicates that the proper standard is proximate cause. *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206, 210, distinguished. Pp. 534–538.

(c) The maritime connection test is also satisfied here. The incident's "general features" may be described as damage by a vessel in navigable water to an underwater structure. There is little question that this is the kind of incident that has "a potentially disruptive impact on maritime commerce." Damaging the structure could lead to a disruption in the water course itself and, as actually happened here, could lead to restrictions on navigational use during repairs. There is also no question that the activity giving rise to the incident—repair or maintenance work on a navigable waterway performed from a vessel—shows a substantial relationship to traditional maritime activity. Even the assertion that the city's alleged failure to properly maintain and operate the tunnel system was a proximate cause of the flood damage does not take this suit out of admiralty. Under *Sisson*, the substantial relationship test is satisfied when at least one alleged tortfeasor was engaging in activity substantially related to traditional maritime activity and such activity is claimed to have been a proximate cause of the incident. There is no merit to the argument that the activity should be characterized at a hypergeneralized level, such as "repair and maintenance," to eliminate any hint of maritime connection, or to the argument that *Sisson* is being given too expansive a reading. Pp. 538–543.

(d) There are theoretical, as well as practical, reasons to reject the city's proposed multifactor test for admiralty jurisdiction where most of the victims, and one of the tortfeasors, are land based. The *Sisson* tests are directed at the same objectives invoked to support a multifactor test, the elimination of admiralty jurisdiction where the rationale for the jurisdiction does not support it. In the Extension Act, Congress has already made a judgment that a land-based victim may properly be subject to admiralty jurisdiction; surely a land-based joint tortfeasor has no claim to supposedly more favorable treatment. Moreover, contrary to the city's position, exercise of admiralty jurisdiction does not result in automatic displacement of state law. A multifactor test would also be hard to apply, jettisoning relative predictability for the open-ended rough-and-tumble of factors, inviting complex argument in a trial court and a virtually inevitable appeal. Pp. 543–548.

3 F. 3d 225, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and GINSBURG, JJ., joined. O'CONNOR, J., filed a concurring opinion, *post*, p. 548. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined, *post*, p. 549. STEVENS and BREYER, JJ., took no part in the decision of the cases.

Ben Barnow argued the cause for petitioner in No. 93–762. With him on the briefs were *Alan M. Goldberg*, *Albert Cueller*, *Robert A. Holstein*, *Aron D. Robinson*, *William J. Harte*, *Philip B. Kurland*, and *Alan S. Madans*. *Lawrence Rosenthal* argued the cause for petitioner in No. 93–1094. With him on the briefs were *Susan S. Sher*, *Benna Ruth Solomon*, *Stuart D. Fullerton*, *Theodore R. Tetzlaff*, *Barry Sullivan*, *Russ M. Strobel*, and *Michael F. Sturley*.

John G. Roberts, Jr., argued the cause for respondent Great Lakes Dredge & Dock Co. in both cases. With him on the brief were *David G. Leitch*, *Douglas M. Reimer*, *Carl W. Schwarz*, *Stewart W. Karge*, *William P. Schuman*, *Jeffrey E. Stone*, *Duane M. Kelley*, and *Jack J. Crowe*.†

JUSTICE SOUTER delivered the opinion of the Court.

On April 13, 1992, water from the Chicago River poured into a freight tunnel running under the river and thence into the basements of buildings in the downtown Chicago Loop. Allegedly, the flooding resulted from events several months earlier, when respondent Great Lakes Dredge and Dock Company had used a crane, sitting on a barge in the river next to a bridge, to drive piles into the riverbed above the tunnel. The issue before us is whether a court of the United States has admiralty jurisdiction to determine and limit the extent of Great Lakes's tort liability. We hold this suit to be within federal admiralty jurisdiction.

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†*Richard Ruda* filed a brief for the National Conference of State Legislatures et al. as *amici curiae* urging reversal.

Warren J. Marwedel, *Dennis Minichello*, and *Charles D. Hooper* filed a brief for the Maritime Law Association of the United States as *amicus curiae*.

I

The complaint, together with affidavits subject to no objection, alleges the following facts. In 1990, Great Lakes bid on a contract with petitioner city of Chicago to replace wooden pilings clustered around the piers of several bridges spanning the Chicago River, a navigable waterway within the meaning of *The Daniel Ball*, 10 Wall. 557, 563 (1871). See *Escanaba Co.* v. *Chicago*, 107 U. S. 678, 683 (1883). The pilings (called dolphins) keep ships from bumping into the piers and so protect both. After winning the contract, Great Lakes carried out the work with two barges towed by a tug. One barge carried pilings; the other carried a crane that pulled out old pilings and helped drive in new ones.

In August and September 1991, Great Lakes replaced the pilings around the piers projecting into the river and supporting the Kinzie Street Bridge. After towing the crane-carrying barge into position near one of the piers, Great Lakes's employees secured the barge to the riverbed with spuds, or long metal legs that project down from the barge and anchor it. The workers then used the crane on the barge to pull up old pilings, stow them on the other barge, and drive new pilings into the riverbed around the piers. About seven months later, an eddy formed in the river near the bridge as the collapsing walls or ceiling of a freight tunnel running under the river opened the tunnel to river water, which flowed through to flood buildings in the Loop.

After the flood, many of the victims brought actions in state court against Great Lakes and the city of Chicago, claiming that in the course of replacing the pilings Great Lakes had negligently weakened the tunnel structure, which Chicago (its owner) had not properly maintained. Great Lakes then brought this lawsuit in the United States District Court, invoking federal admiralty jurisdiction. Count I of the complaint seeks the protection of the Limitation of Vessel Owner's Liability Act (Limitation Act), 46 U. S. C. App. § 181 *et seq.*, a statute that would, in effect, permit the admi-

ralty court to decide whether Great Lakes committed a tort and, if so, to limit Great Lakes's liability to the value of the vessels (the tug and two barges) involved if the tort was committed "without the privity or knowledge" of the vessels' owner, 46 U. S. C. App. § 183(a). Counts II and III of Great Lakes's complaint ask for indemnity and contribution from the city for any resulting loss to Great Lakes.

The city, joined by petitioner Jerome B. Grubart, Inc., one of the state-court plaintiffs, filed a motion to dismiss this suit for lack of admiralty jurisdiction. Fed. Rule Civ. Proc. 12(b)(1). The District Court granted the motion, the Seventh Circuit reversed, *Great Lakes Dredge & Dock Co.* v. *Chicago,* 3 F. 3d 225 (1993), and we granted certiorari, 510 U. S. 1108 (1994). We now affirm.

II

The parties do not dispute the Seventh Circuit's conclusion that jurisdiction as to Counts II and III (indemnity and contribution) hinges on jurisdiction over the Count I claim. See 3 F. 3d, at 231, n. 9; see also 28 U. S. C. § 1367 (1988 ed., Supp. V) (supplemental jurisdiction); Fed. Rules Civ. Proc. 14(a) and (c) (impleader of third parties). Thus, the issue is simply whether or not a federal admiralty court has jurisdiction over claims that Great Lakes's faulty replacement work caused the flood damage.

A

A federal court's authority to hear cases in admiralty flows initially from the Constitution, which "extend[s]" federal judicial power "to all Cases of admiralty and maritime Jurisdiction." U. S. Const., Art. III, § 2. Congress has embodied that power in a statute giving federal district courts "original jurisdiction . . . of . . . [a]ny civil case of admiralty or maritime jurisdiction . . . ." 28 U. S. C. § 1333(1).

The traditional test for admiralty tort jurisdiction asked only whether the tort occurred on navigable waters. If it did, admiralty jurisdiction followed; if it did not, admiralty

jurisdiction did not exist. See, *e. g.*, *Thomas* v. *Lane*, 23 F. Cas. 957, 960 (No. 13902) (CC Me. 1813) (Story, J., on Circuit). This ostensibly simple locality test was complicated by the rule that the injury had to be "wholly" sustained on navigable waters for the tort to be within admiralty. *The Plymouth*, 3 Wall. 20, 34 (1866) (no jurisdiction over tort action brought by the owner of warehouse destroyed in a fire that started on board a ship docked nearby). Thus, admiralty courts lacked jurisdiction over, say, a claim following a ship's collision with a pier insofar as it injured the pier, for admiralty law treated the pier as an extension of the land. *Martin* v. *West*, 222 U. S. 191, 197 (1911); *Cleveland Terminal & Valley R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316, 319 (1908).

This latter rule was changed in 1948, however, when Congress enacted the Extension of Admiralty Jurisdiction Act, 62 Stat. 496. The Act provided that

> "[t]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." 46 U. S. C. App. § 740.

The purpose of the Act was to end concern over the sometimes confusing line between land and water, by investing admiralty with jurisdiction over "all cases" where the injury was caused by a ship or other vessel on navigable water, even if such injury occurred on land. See, *e. g.*, *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206, 209–210 (1963); *Executive Jet Aviation, Inc.* v. *Cleveland*, 409 U. S. 249, 260 (1972).

After this congressional modification to gather the odd case into admiralty, the jurisdictional rule was qualified again in three decisions of this Court aimed at keeping a different class of odd cases out. In the first case, *Executive Jet*, *supra*, tort claims arose out of the wreck of an airplane that collided with a flock of birds just after takeoff on a do-

mestic flight and fell into the navigable waters of Lake Erie. We held that admiralty lacked jurisdiction to consider the claims. We wrote that "a purely mechanical application of the locality test" was not always "sensible" or "consonant with the purposes of maritime law," *id.*, at 261, as when (for example) the literal and universal application of the locality rule would require admiralty courts to adjudicate tort disputes between colliding swimmers, *id.*, at 255. We held that "claims arising from airplane accidents are not cognizable in admiralty" despite the location of the harm, unless "the wrong bear[s] a significant relationship to traditional maritime activity." *Id.*, at 268.

The second decision, *Foremost Ins. Co.* v. *Richardson*, 457 U. S. 668 (1982), dealt with tort claims arising out of the collision of two pleasure boats in a navigable river estuary. We held that admiralty courts had jurisdiction, *id.*, at 677, even though jurisdiction existed only if "the wrong" had "a significant connection with traditional maritime activity," *id.*, at 674. We conceded that pleasure boats themselves had little to do with the maritime commerce lying at the heart of the admiralty court's basic work, *id.*, at 674–675, but we nonetheless found the necessary relationship in

> "[t]he potential disruptive impact [upon maritime commerce] of a collision between boats on navigable waters, when coupled with the traditional concern that admiralty law holds for navigation . . . ," *id.*, at 675.

In the most recent of the trilogy, *Sisson* v. *Ruby*, 497 U. S. 358 (1990), we held that a federal admiralty court had jurisdiction over tort claims arising when a fire, caused by a defective washer/dryer aboard a pleasure boat docked at a marina, burned the boat, other boats docked nearby, and the marina itself. *Id.*, at 367. We elaborated on the enquiry exemplified in *Executive Jet* and *Foremost* by focusing on two points to determine the relationship of a claim to the objectives of admiralty jurisdiction. We noted, first, that

the incident causing the harm, the burning of docked boats at a marina on navigable waters, was of a sort "likely to disrupt [maritime] commercial activity." 497 U. S., at 363. Second, we found a "substantial relationship" with "traditional maritime activity" in the kind of activity from which the incident arose, "the storage and maintenance of a vessel . . . on navigable waters." *Id.*, at 365–367.

After *Sisson*, then, a party seeking to invoke federal admiralty jurisdiction pursuant to 28 U. S. C. § 1333(1) over a tort claim must satisfy conditions both of location and of connection with maritime activity. A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water. 46 U. S. C. App. § 740. The connection test raises two issues. A court, first, must "assess the general features of the type of incident involved," 497 U. S., at 363, to determine whether the incident has "a potentially disruptive impact on maritime commerce," *id.*, at 364, n. 2. Second, a court must determine whether "the general character" of the "activity giving rise to the incident" shows a "substantial relationship to traditional maritime activity." *Id.*, at 365, 364, and n. 2. We now apply the tests to the facts of this suit.

B

The location test is, of course, readily satisfied. If Great Lakes caused the flood, it must have done so by weakening the structure of the tunnel while it drove in new pilings or removed old ones around the bridge piers. The weakening presumably took place as Great Lakes's workers lifted and replaced the pilings with a crane that sat on a barge stationed in the Chicago River. The place in the river where the barge sat, and from which workers directed the crane, is in the "navigable waters of the United States." *Escanaba Co.*, 107 U. S., at 683. Thus, if Great Lakes committed a tort, it must have done it while on navigable waters.

It must also have done it "by a vessel." Even though the barge was fastened to the river bottom and was in use as a work platform at the times in question, at other times it was used for transportation. See 3 F. 3d, at 229. Petitioners do not here seriously dispute the conclusion of each court below that the Great Lakes barge is, for admiralty tort purposes, a "vessel." The fact that the pile driving was done with a crane makes no difference under the location test, given the maritime law that ordinarily treats an "appurtenance" attached to a vessel in navigable waters as part of the vessel itself. See, *e. g.*, *Victory Carriers, Inc.* v. *Law,* 404 U. S. 202, 210–211 (1971); *Gutierrez,* 373 U. S., at 209–210.[1]

Because the injuries suffered by Grubart and the other flood victims were caused by a vessel on navigable water, the location enquiry would seem to be at an end, "notwithstanding that such damage or injury [was] done or consummated on land." 46 U. S. C. App. § 740. Both Grubart and Chicago nonetheless ask us to subject the Extension Act to limitations not apparent from its text. While they concede that the Act refers to "all cases of damage or injury," they argue that "all" must not mean literally every such case, no matter how great the distance between the vessel's tortious activity and the resulting harm. They contend that, to be

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[1] Grubart argues, based on *Margin* v. *Sea-Land Services, Inc.,* 812 F. 2d 973, 975 (CA5 1987), that an appurtenance is considered part of the vessel only when it is defective. See Brief for Petitioner in No. 93–762, pp. 34–35 (Grubart Brief). *Margin,* however, does not so hold. It dealt with a land-based crane that lowered a ship's hatch cover dangerously close to a welder working on a dock, and its result turned not on the condition of the hatch cover, the putative appurtenance, but on the fact that the plaintiff did not allege that "vessel negligence proximately caused his injury." 812 F. 2d, at 977. Indeed, the argument that Congress intended admiralty jurisdiction to extend to injuries caused by defective appurtenances, but not to appurtenances in good condition when operated negligently, makes no sense. See *Gutierrez,* 373 U. S., at 210 ("There is no distinction in admiralty between torts committed by the ship itself and by the ship's personnel while operating it . . .").

within the Act, the damage must be close in time and space to the activity that caused it: that it must occur "reasonably contemporaneously" with the negligent conduct and no "farther from navigable waters than the reach of the vessel, its appurtenances and cargo." Brief for Petitioner in No. 93–1094, p. 45 (City Brief). For authority, they point to this Court's statement in *Gutierrez*, *supra*, that jurisdiction is present when the "impact" of the tortious activity "is felt ashore at a time and place not remote from the wrongful act." *Id.*, at 210.[2]

The demerits of this argument lie not only in its want of textual support for its nonremoteness rule, but in its disregard of a less stringent but familiar proximity condition tied to the language of the statute. The Act uses the phrase "caused by," which more than one Court of Appeals has read as requiring what tort law has traditionally called "proximate causation." See, *e. g.*, *Pryor* v. *American President Lines*, 520 F. 2d 974, 979 (CA4 1975), cert. denied, 423 U. S. 1055 (1976); *Adams* v. *Harris County*, 452 F. 2d 994, 996–997 (CA5 1971), cert. denied, 406 U. S. 968 (1972). This classic tort notion normally eliminates the bizarre, cf. *Palsgraf* v. *Long Island R. Co.*, 248 N. Y. 339, 162 N. E. 99 (1928), and its use should obviate not only the complication but even the need for further temporal or spatial limitations. Nor is reliance on familiar proximate causation inconsistent with *Gutierrez*, which used its nonremote language, not to announce a special test, but simply to distinguish its own facts (the victim having slipped on beans spilling from cargo containers being unloaded from a ship) from what the Court called "[v]arious far-fetched hypotheticals," such as injury to someone slipping on beans that continue to leak from the

[2] At oral argument, counsel for the city undercut this argument by conceding that admiralty jurisdiction would govern claims arising from an incident in which a ship on navigable waters slipped its moorings, drifted into a dam, and caused a breach in the dam that resulted in flooding of surrounding territory. Tr. of Oral Arg. 17.

containers after they had been shipped from Puerto Rico to a warehouse in Denver. 373 U. S., at 210. See also *Victory Carriers, supra,* at 210–211.

The city responds by saying that, as a practical matter, the use of proximate cause as a limiting jurisdictional principle would undesirably force an admiralty court to investigate the merits of the dispute at the outset of a case when it determined jurisdiction.[3] The argument, of course, assumes that the truth of jurisdictional allegations must always be determined with finality at the threshold of litigation, but that assumption is erroneous. Normal practice permits a party to establish jurisdiction at the outset of a case by means of a nonfrivolous assertion of jurisdictional elements, see, *e. g.*, *Bray* v. *Alexandria Women's Health Clinic,* 506 U. S. 263, 285 (1993); *Bell* v. *Hood,* 327 U. S. 678, 682–683 (1946), and any litigation of a contested subject-matter jurisdictional fact issue occurs in comparatively summary proce-

[3] The city in part bases its assertion about the practical effects of a proximate cause rule on a reading of *Crowell* v. *Benson,* 285 U. S. 22, 54–56 (1932), which, according to the city, held that the Longshoremen's and Harbor Workers' Compensation Act could not constitutionally apply to an employee absent a finding that he was actually injured on navigable waters. Thus, the city argues, a construction of the Extension Act that would permit the assertion of federal jurisdiction over land-based injuries absent a finding, on the merits, of actual causation "would raise serious constitutional questions." See City Brief 41–42.

Even if the city's interpretation of *Crowell* is correct, it is not dispositive here. Constitutional difficulties need not arise when a court defers final determination of facts upon which jurisdiction depends until after the first jurisdictional skirmish. In the standing context, for example, we have held that "the Constitution does not require that the plaintiff offer . . . proof [of the facts showing that the plaintiff sustained actual injury] as a threshold matter in order to invoke the District Court's jurisdiction." *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.,* 484 U. S. 49, 66 (1987). We see no reason why a different rule should apply here, and find ourselves in the company of the city's own *amici.* See Brief for National Conference of State Legislatures et al. as *Amici Curiae* 18–19, n. 9 (suggesting that "a court need not decide the merits of causation issues to resolve a jurisdictional challenge").

dure before a judge alone (as distinct from litigation of the same fact issue as an element of the cause of action, if the claim survives the jurisdictional objection). See 2A J. Moore & J. Lucas, Moore's Federal Practice ¶ 12.07[2.–1] (2d ed. 1994); 5A C. Wright & A. Miller, Federal Practice and Procedure § 1350 (2d ed. 1990). There is no reason why this should not be just as true for proximate causation as it is for the maritime nature of the tortfeasor's activity giving rise to the incident. See *Sisson*, 497 U. S., at 365. There is no need or justification, then, for imposing an additional nonremoteness hurdle in the name of jurisdiction.

C

We now turn to the maritime connection enquiries, the first being whether the incident involved was of a sort with the potential to disrupt maritime commerce. In *Sisson*, we described the features of the incident in general terms as "a fire on a vessel docked at a marina on navigable waters," *id.*, at 363, and determined that such an incident "plainly satisf[ied]" the first maritime connection requirement, *ibid.*, because the fire could have "spread to nearby commercial vessels or ma[d]e the marina inaccessible to such vessels" and therefore "[c]ertainly" had a "potentially disruptive impact on maritime commerce," *id.*, at 362. We noted that this first prong went to potential effects, not to the "particular facts of the incident," noting that in both *Executive Jet* and *Foremost* we had focused not on the specific facts at hand but on whether the "general features" of the incident were "likely to disrupt commercial activity." 497 U. S., at 363.

The first *Sisson* test turns, then, on a description of the incident at an intermediate level of possible generality. To speak of the incident as "fire" would have been too general to differentiate cases; at the other extreme, to have described the fire as damaging nothing but pleasure boats and their tie-up facilities would have ignored, among other things, the capacity of pleasure boats to endanger commer-

cial shipping that happened to be nearby. We rejected both extremes and instead asked whether the incident could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping.

Following *Sisson*, the "general features" of the incident at issue here may be described as damage by a vessel in navigable water to an underwater structure. So characterized, there is little question that this is the kind of incident that has a "potentially disruptive impact on maritime commerce." As it actually turned out in this suit, damaging a structure beneath the riverbed could lead to a disruption in the water course itself, App. 33 (eddy formed above the leak); and, again as it actually happened, damaging a structure so situated could lead to restrictions on the navigational use of the waterway during required repairs. See Pet. for Cert. in No. 93–1094, p. 22a (District Court found that after the flood "[t]he river remained closed for over a month," "[r]iver traffic ceased, several commuter ferries were stranded, and many barges could not enter the river system . . . because the river level was lowered to aid repair efforts"). Cf. *Pennzoil Producing Co.* v. *Offshore Express, Inc.*, 943 F. 2d 1465 (CA5 1991) (admiralty suit when vessel struck and ruptured gas pipeline and gas exploded); *Marathon Pipe Line Co.* v. *Drilling Rig Rowan/Odessa*, 761 F. 2d 229, 233 (CA5 1985) (admiralty jurisdiction when vessel struck pipeline, "a fixed structure on the seabed"); *Orange Beach Water, Sewer, and Fire Protection Authority* v. *M/V Alva*, 680 F. 2d 1374 (CA11 1982) (admiralty suit when vessel struck underwater pipeline).

In the second *Sisson* enquiry, we look to whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. We ask whether a tortfeasor's activity, commercial or noncommercial, on navigable waters is so closely related to activity traditionally subject to admiralty law that the reasons for applying special admiralty rules would apply in

the suit at hand. Navigation of boats in navigable waters clearly falls within the substantial relationship, *Foremost*, 457 U. S., at 675; storing them at a marina on navigable waters is close enough, *Sisson*, *supra*, at 367; whereas in flying an airplane over the water, *Executive Jet*, 409 U. S., at 270–271, as in swimming, *id.*, at 255–256, the relationship is too attenuated.

On like reasoning, the "activity giving rise to the incident" in this suit, *Sisson*, *supra*, at 364, should be characterized as repair or maintenance work on a navigable waterway performed from a vessel. Described in this way, there is no question that the activity is substantially related to traditional maritime activity, for barges and similar vessels have traditionally been engaged in repair work similar to what Great Lakes contracted to perform here. See, *e. g.*, *Shea* v. *Rev-Lyn Contracting Co.*, 868 F. 2d 515, 518 (CA1 1989) (bridge repair by crane-carrying barge); *Nelson* v. *United States*, 639 F. 2d 469, 472 (CA9 1980) (Kennedy, J.) (repair of wave suppressor from a barge); *In re New York Dock Co.*, 61 F. 2d 777 (CA2 1932) (pile driving from crane-carrying barge in connection with the building of a dock); *In re P. Sanford Ross, Inc.*, 196 F. 921, 923–924 (EDNY 1912) (pile driving from crane-carrying barge close to water's edge), rev'd on other grounds, 204 F. 248 (CA2 1913); cf. *In re The V–14813*, 65 F. 2d 789, 790 (CA5 1933) ("There are many cases holding that a dredge, or a barge with a pile driver, employed on navigable waters, is subject to maritime jurisdiction . . . § 7.54"); *Lawrence* v. *Flatboat*, 84 F. 200 (SD Ala. 1897) (pile driving from crane-carrying barge in connection with the erection of bulkheads), aff'd *sub nom. Southern Log Cart & Supply Co.* v. *Lawrence*, 86 F. 907 (CA5 1898).

The city argues, to the contrary, that a proper application of the activity prong of *Sisson* would consider the city's own alleged failure at properly maintaining and operating the tunnel system that runs under the river. City Brief 48–49. If this asserted proximate cause of the flood victims' injuries

were considered, the city submits, its failure to resemble any traditional maritime activity would take this suit out of admiralty.

The city misreads *Sisson*, however, which did not consider the activities of the washer/dryer manufacturer, who was possibly an additional tortfeasor, and whose activities were hardly maritime; the activities of Sisson, the boat owner, supplied the necessary substantial relationship to traditional maritime activity. Likewise, in *Foremost*, we said that "[b]ecause the 'wrong' here involves the negligent operation of a vessel on navigable waters, we believe that it has a sufficient nexus to traditional maritime activity to sustain admiralty jurisdiction . . . ." 457 U. S., at 674. By using the word "involves," we made it clear that we need to look only to whether one of the arguably proximate causes of the incident originated in the maritime activity of a tortfeasor: as long as one of the putative tortfeasors was engaged in traditional maritime activity the allegedly wrongful activity will "involve" such traditional maritime activity and will meet the second nexus prong. Thus, even if we were to identify the "activity giving rise to the incident" as including the acts of the city as well as Great Lakes, admiralty jurisdiction would nevertheless attach. That result would be true to *Sisson*'s requirement of a "substantial relationship" between the "activity giving rise to the incident" and traditional maritime activity. *Sisson* did not require, as the city in effect asserts, that there be a complete identity between the two. The substantial relationship test is satisfied when at least one alleged tortfeasor was engaging in activity substantially related to traditional maritime activity and such activity is claimed to have been a proximate cause of the incident.

Petitioners also argue that we might get a different result simply by characterizing the "activity" in question at a different level of generality, perhaps as "repair and maintenance," or as "pile driving near a bridge." The city is, of course, correct that a tortfeasor's activity can be described

at a sufficiently high level of generality to eliminate any hint of maritime connection, and if that were properly done *Sisson* would bar assertion of admiralty jurisdiction. But to suggest that such hypergeneralization ought to be the rule would convert *Sisson* into a vehicle for eliminating admiralty jurisdiction. Although there is inevitably some play in the joints in selecting the right level of generality when applying the *Sisson* test, the inevitable imprecision is not an excuse for whimsy. The test turns on the comparison of traditional maritime activity to the arguably maritime character of the tortfeasor's activity in a given case; the comparison would merely be frustrated by eliminating the maritime aspect of the tortfeasor's activity from consideration.[4]

Grubart makes an additional claim that *Sisson* is being given too expansive a reading. If the activity at issue here is considered maritime related, it argues, then virtually "every activity involving a vessel on navigable waters" would be "a traditional maritime activity sufficient to invoke maritime jurisdiction." Grubart Brief 6. But this is not fatal criticism. This Court has not proposed any radical alteration of the traditional criteria for invoking admiralty jurisdiction in tort cases, but has simply followed the lead of the lower federal courts in rejecting a location rule so rigid as to extend admiralty to a case involving an airplane, not a vessel, engaged in an activity far removed from anything traditionally maritime. See *Executive Jet*, 409 U. S., at 268–274; see also *Peytavin* v. *Government Employees Ins. Co.*, 453 F. 2d 1121, 1127 (CA5 1972) (no jurisdiction over claim

[4] The city also proposes that we define the activity as "the operation of an underground tunnel connected to Loop buildings." City Brief 49–50. But doing this would eliminate the maritime tortfeasor's activity from consideration entirely. This (like the choice of a supreme level of generality, described in the text) would turn *Sisson* v. *Ruby*, 497 U. S. 358 (1990), on its head, from a test to weed out torts without a maritime connection into an arbitrary exercise for eliminating jurisdiction over even vessel-related torts connected to traditional maritime commerce.

for personal injury by motorist who was rear-ended while waiting for a ferry on a floating pontoon serving as the ferry's landing); *Chapman* v. *Grosse Pointe Farms*, 385 F. 2d 962 (CA6 1967) (no admiralty jurisdiction over claim of swimmer who injured himself when diving off pier into shallow but navigable water). In the cases after *Executive Jet*, the Court stressed the need for a maritime connection, but found one in the navigation or berthing of pleasure boats, despite the facts that the pleasure boat activity took place near shore, where States have a strong interest in applying their own tort law, or was not on all fours with the maritime shipping and commerce that has traditionally made up the business of most maritime courts. *Sisson*, 497 U. S., at 367; *Foremost*, 457 U. S., at 675. Although we agree with petitioners that these cases do not say that every tort involving a vessel on navigable waters falls within the scope of admiralty jurisdiction no matter what, they do show that ordinarily that will be so.[5]

III

Perhaps recognizing the difficulty of escaping the case law, petitioners ask us to change it. In cases "involving land based parties and injuries," the city would have us adopt a condition of jurisdiction that

> "the totality of the circumstances reflects a federal interest in protecting maritime commerce sufficiently weighty to justify shifting what would otherwise be state-court litigation into federal court under the federal law of admiralty." City Brief 32.

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[5] Because we conclude that the tort alleged in Count I of Great Lakes's complaint satisfies both the location and connection tests necessary for admiralty jurisdiction under 28 U. S. C. § 1333(1), we need not consider respondent Great Lakes's alternative argument that the Extension of Admiralty Jurisdiction Act, 46 U. S. C. App. § 740, provides an independent basis of federal jurisdiction over the complaint.

Grubart and the city say that the Fifth Circuit has applied a somewhat similar "four-factor test" looking to "the functions and roles of the parties; the types of vehicles and instrumentalities involved; the causation and the type of injury; and traditional concepts of the role of admiralty law." *Kelly* v. *Smith*, 485 F. 2d 520, 525 (CA5 1973); see also *Molett* v. *Penrod Drilling Co.*, 826 F. 2d 1419, 1426 (CA5 1987) (adding three more factors: the "impact of the event on maritime shipping and commerce"; "the desirability of a uniform national rule to apply to such matters"; and "the need for admiralty 'expertise' in the trial and decision of the case"), cert. denied *sub nom. Columbus-McKinnon, Inc.* v. *Gearench, Inc.*, 493 U. S. 1003 (1989). Although they point out that *Sisson* disapproved the use of four-factor or seven-factor tests "where all the relevant entities are engaged in similar types of activity," this rule implicitly left the matter open for cases like this one, where most of the victims, and one of the tortfeasors, are based on land. See 497 U. S., at 365, n. 3 ("Different issues may be raised by a case in which one of the instrumentalities is engaged in a traditional maritime activity, but the other is not"). The city argues that there is a good reason why cases like this one should get different treatment. Since the basic rationale for federal admiralty jurisdiction is "protection of maritime commerce through uniform rules of decision," the proposed jurisdictional test would improve on *Sisson* in limiting the scope of admiralty jurisdiction more exactly to its rationale. A multiple factor test would minimize, if not eliminate, the awkward possibility that federal admiralty rules or procedures will govern a case, to the disadvantage of state law, when admiralty's purpose does not require it. Cf. *Foremost*, *supra*, at 677–686 (Powell, J., dissenting).

Although the arguments are not frivolous, they do not persuade. It is worth recalling that the *Sisson* tests are aimed at the same objectives invoked to support a new multifactor test, the elimination of admiralty jurisdiction where the ra-

tionale for the jurisdiction does not support it. If the tort produces no potential threat to maritime commerce or occurs during activity lacking a substantial relationship to traditional maritime activity, *Sisson* assumes that the objectives of admiralty jurisdiction probably do not require its exercise, even if the location test is satisfied. If, however, the *Sisson* tests are also satisfied, it is not apparent why the need for admiralty jurisdiction in aid of maritime commerce somehow becomes less acute merely because land-based parties happen to be involved. Certainly Congress did not think a land-based party necessarily diluted the need for admiralty jurisdiction or it would have kept its hands off the primitive location test.

Of course, one could claim it to be odd that under *Sisson* a land-based party (or more than one) may be subject to admiralty jurisdiction, but it would appear no less odd under the city's test that a maritime tortfeasor in the most traditional mould might be subject to state common-law jurisdiction. Other things being equal, it is not evident why the first supposed anomaly is worse than the second. But other things are not even equal. As noted just above, Congress has already made the judgment, in the Extension Act, that a land-based victim may properly be subject to admiralty jurisdiction. Surely a land-based joint tortfeasor has no claim to supposedly more favorable treatment.

Nor are these the only objections to the city's position. Contrary to what the city suggests, City Brief 10, 14–15, 25–26, 30, exercise of federal admiralty jurisdiction does not result in automatic displacement of state law. It is true that, "[w]ith admiralty jurisdiction comes the application of substantive admiralty law." *East River S. S. Corp.* v. *Transamerica Delaval Inc.*, 476 U. S. 858, 864 (1986). But, to characterize that law, as the city apparently does, as "federal rules of decision," City Brief 15, is

> "a destructive oversimplification of the highly intricate interplay of the States and the National Government in

> their regulation of maritime commerce. It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope." *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 373 (1959) (footnote omitted).

See *East River*, *supra*, at 864–865 ("Drawn from state and federal sources, the general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules" (footnote omitted)). Thus, the city's proposal to synchronize the jurisdictional enquiry with the test for determining the applicable substantive law would discard a fundamental feature of admiralty law, that federal admiralty courts sometimes do apply state law. See, *e. g.*, *American Dredging Co.* v. *Miller*, 510 U. S. 443, 451–452 (1994); see also 1 S. Friedell, Benedict on Admiralty § 112, p. 7–49 (7th ed. 1994).[6]

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[6] We will content ourselves simply with raising a question about another of the city's assumptions, which does not go to anything dispositive for us. It is true that this Court has said that "the primary focus of admiralty jurisdiction is unquestionably the protection of maritime commerce," *Foremost Ins. Co.* v. *Richardson*, 457 U. S. 668, 674 (1982); see *Sisson*, 497 U. S., at 367; see *id.*, at 364, n. 2, a premise that recently has been questioned, see Casto, The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates, 37 Am. J. Legal Hist. 117 (1993). However that may be, this Court has never limited the interest in question to the "protection of maritime commerce through uniform rules of decision," as the city would have it. City Brief 19. Granted, whatever its precise purpose, it is likely that Congress thought of uniformity of substantive law as a subsidiary goal conducive to furthering that purpose. See Currie, Federalism and the Admiralty: "The Devil's Own Mess," 1960 S. Ct. Rev. 158, 163 ("[A] uniform law was apparently one reason for the establishment of the admiralty jurisdiction in 1789" (footnote omitted)). But we are unwilling to rule out that the first Congress saw a value in federal admiralty courts beyond fostering uniformity of substantive law, stemming, say, from a concern with local bias similar to the presupposition for diversity jurisdiction. See The Federalist No. 80, p. 538 (J. Cooke ed. 1961) (A. Hamil-

Finally, on top of these objections going to the city's premises there is added a most powerful one based on the practical consequences of adopting a multifactor test. Although the existing case law tempers the locality test with the added requirements looking to potential harm and traditional activity, it reflects customary practice in seeing jurisdiction as the norm when the tort originates with a vessel in navigable waters, and in treating departure from the locality principle as the exception. For better or worse, the case law has thus carved out the approximate shape of admiralty jurisdiction in a way that admiralty lawyers understand reasonably well. As against this approach, so familiar and relatively easy, the proposed four- or seven-factor test would be hard to apply, jettisoning relative predictability for the open-ended rough-and-tumble of factors, inviting complex argument in a trial court and a virtually inevitable appeal.

Consider, for example, just one of the factors under the city's test, requiring a district court at the beginning of every purported admiralty case to determine the source (state or federal) of the applicable substantive law. The difficulty of doing that was an important reason why this Court in *Romero*, *supra*, was unable to hold that maritime claims fell within the scope of the federal-question-jurisdiction statute, 28 U. S. C. § 1331. 358 U. S., at 375–376 ("[S]ound judicial policy does not encourage a situation which necessitates constant adjudication of the boundaries of state and federal competence"). That concern applies just as strongly to

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ton) ("maritime causes . . . so commonly affect the rights of foreigners"); 1 M. Farrand, Records of the Federal Convention of 1787, p. 124 (1911); 2 *id.*, at 46; see generally D. Robertson, Admiralty and Federalism 95–103 (1970). After all, if uniformity of substantive law had been Congress's only concern, it could have left admiralty jurisdiction in the state courts subject to an appeal to a national tribunal (as it did with federal-question jurisdiction until 1875, and as the Articles of Confederation had done with cases of prize and capture).

cases invoking a district court's admiralty jurisdiction under 28 U. S. C. § 1333, under which the jurisdictional enquiry for maritime torts has traditionally been quite uncomplicated.

Reasons of practice, then, are as weighty as reasons of theory for rejecting the city's call to adopt a multifactor test for admiralty jurisdiction for the benefit of land-based parties to a tort action.

Accordingly, we conclude that the Court of Appeals correctly held that the District Court had admiralty jurisdiction over the respondent Great Lakes's Limitation Act suit. The judgment of the Court of Appeals is

Affirmed.

JUSTICE STEVENS and JUSTICE BREYER took no part in the decision of these cases.

JUSTICE O'CONNOR, concurring.

I concur in the Court's judgment and opinion. The Court properly holds that, when a court is faced with a case involving multiple tortfeasors, some of whom may not be maritime actors, if *one* of the putative tortfeasors was engaged in traditional maritime activity alleged to have proximately caused the incident, then the supposedly wrongful activity "involves" traditional maritime activity. The possible involvement of other, nonmaritime parties does not affect the jurisdictional inquiry as to the maritime party. *Ante*, at 541. I do not, however, understand the Court's opinion to suggest that, having found admiralty jurisdiction over a particular claim against a particular party, a court *must* then exercise admiralty jurisdiction over *all* the claims and parties involved in the case. Rather, the court should engage in the usual supplemental jurisdiction and impleader inquiries. See 28 U. S. C. § 1367 (1988 ed., Supp. V); Fed. Rule Civ. Proc. 14; see also *ante*, at 531. I find nothing in the Court's opinion to the contrary.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in the judgment.

I agree with the majority's conclusion that 28 U. S. C. § 1333(1) grants the District Court jurisdiction over the great Chicago flood of 1992. But I write separately because I cannot agree with the test the Court applies to determine the boundaries of admiralty and maritime jurisdiction. Instead of continuing our unquestioning allegiance to the multifactor approach of *Sisson* v. *Ruby*, 497 U. S. 358 (1990), I would restore the jurisdictional inquiry to the simple question whether the tort occurred on a vessel on the navigable waters of the United States. If so, then admiralty jurisdiction exists. This clear, bright-line rule, which the Court applied until recently, ensures that judges and litigants will not waste their resources in determining the extent of federal subject-matter jurisdiction.

I

This action requires the Court to redefine once again the line between federal admiralty jurisdiction and state power due to an ambiguous balancing test. The fact that we have had to revisit this question for the third time in a little over 10 years indicates the defects of the Court's current approach. The faults of balancing tests are clearest, and perhaps most destructive, in the area of jurisdiction. Vague and obscure rules may permit judicial power to reach beyond its constitutional and statutory limits, or they may discourage judges from hearing disputes properly before them. Such rules waste judges' and litigants' resources better spent on the merits, as this action itself demonstrates. It is especially unfortunate that this has occurred in admiralty, an area that once provided a jurisdictional rule almost as clear as the 9th and 10th verses of Genesis: "And God said, Let the waters under the heaven be gathered together unto one place, and let the dry land appear: and it was so. And God

called the dry land Earth; and the gathering together of the waters called he Seas: and God saw that it was good." The Holy Bible, Genesis 1:9–10 (King James Version).

As recently as 1972, courts and parties experienced little difficulty in determining whether a case triggered admiralty jurisdiction, thanks to the simple "situs rule." In *The Plymouth*, 3 Wall. 20, 36 (1866), this Court articulated the situs rule thus: "Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." This simple, clear test, which Justice Story pronounced while riding circuit, see *Thomas* v. *Lane*, 23 F. Cas. 957, 960 (No. 13,902) (CC Me. 1813), did not require alteration until 1948, when Congress included within the admiralty jurisdiction torts caused on water, but whose effects were felt on land. See Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U. S. C. App. § 740.

The simplicity of this test was marred by modern cases that tested the boundaries of admiralty jurisdiction with ever more unusual facts. In *Executive Jet Aviation, Inc.* v. *Cleveland*, 409 U. S. 249 (1972), we held that a plane crash in Lake Erie was not an admiralty case within the meaning of § 1333(1) because the tort did not "bear a significant relationship to traditional maritime activity." *Id.*, at 268. What subsequent cases have failed to respect, however, is *Executive Jet*'s clear limitation to torts involving aircraft. As we said:

> "One area in which locality as the exclusive test of admiralty tort jurisdiction has given rise to serious problems in application is that of aviation. . . . [W]e have concluded that maritime locality alone is not a sufficient predicate for admiralty jurisdiction *in aviation tort cases.*" *Id.*, at 261 (emphasis added).

Our identification of the "significant relationship" factor occurred wholly in the context of a discussion of the difficulties

that aircraft posed for maritime law. In fact, while we recognized the extensive criticism of the strict locality rule, we noted that "for the traditional types of maritime torts, the traditional test has worked quite satisfactorily." *Id.*, at 254. Thus, *Executive Jet*, properly read, holds that if a tort occurred on board a vessel on the navigable waters, the situs test applies, but if the tort involved an airplane, then the "significant relationship" requirement is added.

Although it modified the strict locality test, *Executive Jet* still retained a clear rule that I could apply comfortably to the main business of the admiralty court. Nonetheless, the simplicity and clarity of this approach met its demise in *Foremost Ins. Co.* v. *Richardson*, 457 U. S. 668 (1982). That case involved the collision of two pleasure boats on the navigable waters, a tort that some commentators had argued did not fall within the admiralty jurisdiction because it did not implicate maritime commerce. See, *e. g.*, Stolz, Pleasure Boating and Admiralty: *Erie* at Sea, 51 Calif. L. Rev. 661 (1963). The Court could have resolved the case and found jurisdiction simply by applying the situs test. Instead, responding to the arguments that admiralty jurisdiction was limited to commercial maritime activity, the Court found that the tort's "significant connection with traditional maritime activity" and the accident's "potential disruptive impact" on maritime commerce prompted an exercise of federal jurisdiction. 457 U. S., at 674–675.

It is clear that *Foremost* overextended *Executive Jet*, which had reserved the significant relationship inquiry for aviation torts. As JUSTICE SCALIA noted in *Sisson*, *Executive Jet* is better "understood as resting on the quite simple ground that the tort did not involve a vessel, which had traditionally been thought required by the leading scholars in the field." 497 U. S., at 369–370 (opinion concurring in judgment). *Executive Jet* did not in the least seek to alter the strict locality test for torts involving waterborne vessels. *Foremost*, however, converted *Executive Jet*'s exception into

the rule. In addition to examining situs, *Foremost* required federal courts to ask whether the tort bore a significant relationship to maritime commerce, and whether the accident had a potential disruptive impact on maritime commerce. 457 U. S., at 673–675. The lower courts adopted different approaches as they sought to apply *Foremost*'s alteration of the *Executive Jet* test. See *Sisson*, 497 U. S., at 365, n. 4 (citing cases).

Sisson then affirmed the inherent vagueness of the *Foremost* test. *Sisson* involved a marina fire that was caused by a faulty washer/dryer unit on a pleasure yacht. The fire destroyed the yacht and damaged several vessels in addition to the marina. In finding admiralty jurisdiction, the Court held that the federal judicial power would extend to such cases only if: (1) in addition to situs, (2) the "incident" poses a potential hazard to maritime commerce, and (3) the "activity" giving rise to the incident bears a substantial relationship to traditional maritime activity. 497 U. S., at 362–364. The traditional situs test also would have sustained a finding of jurisdiction because the fire started on board a vessel on the waterways. Thus, what was once a simple question—did the tort occur on the navigable waters—had become a complicated, multifactor analysis.

The disruption and confusion created by the *Foremost-Sisson* approach is evident from the post-*Sisson* decisions of the lower courts and from the majority opinion itself. Faced with the task of determining what is an "incident" or "activity" for *Sisson* purposes, the Fourth, Fifth, and Ninth Circuits simply reverted to the multifactor test they had employed before *Sisson*. See *Price* v. *Price*, 929 F. 2d 131, 135–136 (CA4 1991); *Coats* v. *Penrod Drilling Corp.*, 5 F. 3d 877, 885–886 (CA5 1993); *Delta Country Ventures, Inc.* v. *Magana*, 986 F. 2d 1260, 1263 (CA9 1993). The District Court's opinion in this action is typical: While nodding to *Sisson*, the court focused its entire attention on a totality-of-the-circumstances test, which includes factors such as "the

functions and roles of the parties" and the "traditional concepts of the role of admiralty law." App. to Pet. for Cert. in No. 93–1094, p. 32a. Such considerations have no place in the *Sisson* test and should have no role in any jurisdictional inquiry. The dangers of a totality-of-the-circumstances approach to jurisdiction should be obvious. An undefined test requires courts and litigants to devote substantial resources to determine whether a federal court may hear a specific case. Such a test also introduces undesirable uncertainty into the affairs of private actors—even those involved in common maritime activities—who cannot predict whether or not their conduct may justify the exercise of admiralty jurisdiction.

Although the majority makes an admirable attempt to clarify what *Sisson* obscures, I am afraid that its analysis cannot mitigate the confusion of the *Sisson* test. Thus, faced with the "potential to disrupt maritime commerce" prong, *ante*, at 538, the majority must resort to "an intermediate level of possible generality" to determine the "'general features'" of the incident here, *ibid.* The majority does not explain the origins of "levels of generality," nor, to my knowledge, do we employ such a concept in other areas of jurisdiction. We do not use "levels of generality" to characterize residency or amount in controversy for diversity purposes, or to determine the presence of a federal question. Nor does the majority explain why an "intermediate" level of generality is appropriate. It is even unclear what an intermediate level of generality is, and we cannot expect that district courts will apply such a concept uniformly in similar cases. It is far from obvious how the undefined intermediate level of generality indicates that the "incident" for *Sisson* purposes is that of a vessel damaging an underwater structure.

The majority also applies levels of generality to the next prong of *Sisson*—whether the tortfeasor is engaged in "activity" that shows a "substantial relationship to traditional

maritime activity." The majority decides that the activity is repair work by a vessel on a navigable waterway. But, as the petitioners rightly argue, the "activity" very well could be bridge repair or pile driving. One simply cannot tell due to the ambiguities intrinsic to *Sisson* and to the uncertainty as to the meaning of levels of generality. The majority's response implicitly acknowledges the vagueness inherent in *Sisson:* "Although there is inevitably some play in the joints in selecting the right level of generality when applying the *Sisson* test, the inevitable imprecision is not an excuse for whimsy." *Ante*, at 542. The Court cannot provide much guidance to district courts as to the correct level of generality; instead, it can only say that any level is probably sufficient so long as it does not lead to "whimsy." When it comes to these issues, I prefer a clearer rule, which this Court has demanded with respect to federal question or diversity jurisdiction. Indeed, the "play in the joints" and "imprecision" that the Court finds "inevitable" easily could be avoided by returning to the test that prevailed before *Foremost.* In its effort to create an elegant, general test that could include all maritime torts, *Sisson* has only disrupted what was once a simple inquiry.

II

It should be apparent that this Court does not owe *Sisson* the benefit of *stare decisis.* As shown above, *Sisson* and *Foremost* themselves overextended *Executive Jet* and deviated from a long tradition of admiralty jurisprudence. More importantly, the new test of *Sisson* and *Foremost* did not produce greater clarity or simplicity in exchange for departing from a century of undisturbed practice. Instead, as discussed earlier, the two cases have produced only confusion and disarray in the lower courts and in this Court as well. It would seem that in the area of federal subject-matter jurisdiction, vagueness and ambiguity are grounds enough to revisit an unworkable prior decision.

In place of *Sisson* I would follow the test described at the outset. When determining whether maritime jurisdiction exists under § 1333(1), a federal district court should ask if the tort occurred on a vessel on the navigable waters. This approach won the approval of two Justices in *Sisson*, see 497 U. S., at 373 (SCALIA, J., joined by White, J., concurring in judgment). Although JUSTICE SCALIA's *Sisson* concurrence retained a "normal maritime activities" component, it recognized that anything a vessel does in the navigable waters would meet that requirement, and that "[i]t would be more straightforward to jettison the 'traditional maritime activity' analysis entirely." *Id.*, at 374. I wholly agree and have chosen the straightforward approach, which, for all of its simplicity, would have produced the same results the Court arrived at in *Executive Jet*, *Foremost*, *Sisson*, and this action. Although this approach "might leave within admiralty jurisdiction a few unusual actions," 497 U. S., at 374, such freakish cases will occur rarely. In any event, the resources needed to resolve them "will be saved many times over by a clear jurisdictional rule that makes it unnecessary to decide" what is a traditional maritime activity and what poses a threat to maritime commerce. *Id.*, at 374–375.

In this action, a straightforward application of the proposed test easily produces a finding of admiralty jurisdiction. As the majority quite ably demonstrates, the situs requirement is satisfied because the tort was caused by a "spud barge" on the Chicago River. *Ante*, at 534–536. Although the accident's effects were felt on land, the Extension of Admiralty Jurisdiction Act brings the event within § 1333(1). While I agree with the majority's analysis of this question, I disagree with its decision to continue on to other issues. A simple application of the situs test would yield the same result the Court reaches at the end of its analysis.

This Court pursues clarity and efficiency in other areas of federal subject-matter jurisdiction, and it should demand no less in admiralty and maritime law. The test I have pro-

posed would produce much the same results as the *Sisson* analysis without the need for wasteful litigation over threshold jurisdictional questions. Because *Sisson* departed from a century of precedent, is unworkable, and is easily replaced with a bright-line rule, I concur only in the judgment.

Syllabus

ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* GREEN ET AL.

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

No. 94–197. Argued January 17, 1995—Decided February 22, 1995

The Federal Government partially reimburses States for Aid to Families with Dependent Children (AFDC) programs that either comply with all federal prescriptions or receive a waiver from the Secretary of Health and Human Services (HHS). Respondents, new residents of California, challenged the constitutionality of a California statute limiting new residents, for the first year they live in the State, to the benefits paid in the State from which they came; respondents maintain that the payment differential between new and long-term residents burdens interstate migration and thus violates the right to travel recognized in *Shapiro* v. *Thompson*, 394 U. S. 618. The District Court enjoined the payment differential, and the Court of Appeals affirmed.

Held: No justiciable controversy is before this Court because the case in its current posture is not ripe. The state statute provides that the differential will not take effect absent an HHS waiver. The HHS waiver in effect at the time the lower courts ruled was vacated by the Court of Appeals in a separate proceeding. The Secretary did not seek this Court's review of that Court of Appeals decision. Absent a new HHS waiver, the State will continue to treat respondents the same way it treats long-term California residents. Thus, the parties have no live dispute now, and whether one will arise in the future is conjectural. This impediment to dispositive adjudication requires that the prior judgments in this case be vacated.

26 F. 3d 95, vacated and remanded.

Theodore Garelis, Deputy Attorney General of California, argued the cause for petitioners. With him on the briefs were *Daniel E. Lungren*, Attorney General, *Charlton G. Holland III*, Assistant Attorney General, *Dennis Eckhart*, Supervising Deputy Attorney General, and *Andrea Lynn Hoch*, Deputy Attorney General.

Kathleen M. Sullivan argued the cause for respondents. With her on the brief were *Sarah E. Kurtz*, *Hope G. Nakamura*, *Peter H. Reid*, *Mark D. Rosenbaum*, *Grace A. Galligher*, and *Steven Shapiro*.*

PER CURIAM.

Under Aid to Families With Dependent Children (AFDC), 49 Stat. 627, as amended, 42 U. S. C. § 601 *et seq.*, the Federal Government partially reimburses States for welfare programs that either comply with all federal prescriptions or receive a waiver from the Secretary of Health and Human Services (HHS). 42 U. S. C. § 1315. California seeks to change its AFDC program by limiting new residents, for the first year they live in California, to the benefits paid in the State from which they came. See Cal. Welf. & Inst. Code Ann. § 11450.03 (West Supp. 1994). Green and other new residents who receive AFDC benefits challenged the constitutionality of this California statute in a federal court action; they maintain that the payment differential between new and long-term residents burdens interstate migration and thus violates the right to travel recognized in *Shapiro* v.

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*Briefs of *amici curiae* urging reversal were filed for Minnesota et al. by *Hubert H. Humphrey III*, Attorney General of Minnesota, and *Jocelyn F. Olson*, Assistant Attorney General, joined by the Attorneys General for their respective jurisdictions as follows: *Robert A. Butterworth* of Florida, *Robert A. Marks* of Hawaii, and *Ernest D. Preate, Jr.*, of Pennsylvania; for the Pacific Legal Foundation by *Ronald A. Zumbrun*, *Anthony T. Caso*, and *Deborah J. La Fetra;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *David A. Price*.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *George E. Bushnell, Jr.*, *Paul M. Smith*, and *Marc Goldman;* for Catholic Charities U. S. A. et al. by *Daniel Marcus;* for Law Professors by *Jonathan D. Varat;* for the National Welfare Rights and Reform Union by *Timothy J. Casey* and *Christopher D. Lamb;* and for the NOW Legal Defense and Education Fund et al. by *Martha F. Davis* and *Deborah A. Ellis*.

William Perry Pendley filed a brief for the Mountain States Legal Foundation et al. as *amici curiae*.

Thompson, 394 U. S. 618 (1969), and its progeny. The United States District Court for the Eastern District of California enjoined the payment differential, 811 F. Supp. 516, 523 (1993), and the United States Court of Appeals for the Ninth Circuit affirmed, 26 F. 3d 95 (1994). We granted California's petition for certiorari. *Post*, p. 922. We now find, however, that no justiciable controversy is before us, because the case in its current posture is not ripe.

The California statute provides that the payment differential shall not take effect absent receipt by the State of an HHS waiver. See Cal. Welf. & Inst. Code Ann. § 11450.03(b) (West Supp. 1994). HHS originally granted a waiver, which was in effect when the District Court and Court of Appeals ruled. But "ripeness is peculiarly a question of timing," and "it is the situation now rather than the situation at the time of the [decision under review] that must govern." *Regional Rail Reorganization Act Cases*, 419 U. S. 102, 140 (1974). After the Court of Appeals ruled in this case, it vacated the HHS waiver in a separate proceeding, concluding that the Secretary had not adequately considered objections to California's program. *Beno* v. *Shalala*, 30 F. 3d 1057, 1073–1076 (CA9 1994). The Secretary did not seek this Court's review of the *Beno* decision. California acknowledges that even if it prevails here, the payment differential will not take effect. Tr. of Oral Arg. 3–6. Absent favorable action by HHS on a renewed application for a waiver, California will continue to treat Green and others similarly situated the same way it treats long-term California residents. The parties have no live dispute now, and whether one will arise in the future is conjectural. See *Hall* v. *Beals*, 396 U. S. 45 (1969) *(per curiam)* (after this Court noted probable jurisdiction, Colorado Legislature reduced to two months challenged six-month residency requirement for voting in Presidential elections; revival of controversy consequently became too speculative to warrant Court's passing on substantive issues).

In view of the impediment to dispositive adjudication, we direct the vacation of prior judgments in this case. As we explained earlier this Term, in deciding whether to disturb prior judgments in a case rendered nonjusticiable, we have inquired, pivotally, "whether the party seeking relief from the judgment below caused the [nonjusticiability] by voluntary action." *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, *ante*, at 25. Unlike settlement, see *ibid.*, or a losing party's decision to forgo appeal, see *Karcher* v. *May*, 484 U. S. 72, 83 (1987), California's loss of the federal approval necessary to implement its program was not voluntary. Vacatur is appropriate, therefore, to "clea[r] the path for future relitigation of the issues between the parties and [to] eliminat[e] a judgment, review of which was prevented through happenstance." *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 40 (1950).

Accordingly, the judgment of the United States Court of Appeals is vacated, and the case is remanded to that court with directions to order the vacation of the District Court's judgment and the dismissal of the case.

It is so ordered.

Syllabus

GUSTAFSON ET AL. *v.* ALLOYD CO., INC., FKA ALLOYD HOLDINGS, INC., ET AL.

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

No. 93–404. Argued November 2, 1994—Decided February 28, 1995

Petitioners (collectively Gustafson), the sole shareholders of Alloyd, Inc., sold substantially all of its stock to respondents and other buyers in a private sale agreement. The purchase price included a payment reflecting an estimated increase in the company's net worth from the end of the previous year through the closing, since hard financial data were unavailable. The contract provided that if a year-end audit and financial statements revealed variances between estimated and actual increased value, the disappointed party would receive an adjustment. As a result of the audit, respondents were entitled to recover an adjustment, but instead sought relief under § 12(2) of the Securities Act of 1933 (1933 Act or Act), which gives buyers an express right of rescission against sellers who make material misstatements or omissions "by means of a prospectus." In granting Gustafson's motion for summary judgment, the District Court held that § 12(2) claims can only arise out of initial stock offerings and not a private sale agreement. The Court of Appeals vacated the judgment and remanded the case in light of its intervening decision that the inclusion of the term "communication" in the Act's definition of prospectus meant that the latter term includes all written communications offering a security for sale, and, thus, a § 12(2) right of action applies to private sale agreements.

Held: Section 12(2) does not extend to a private sale contract, since a contract, and its recitations, that are not held out to the public are not a "prospectus" as the term is used in the 1933 Act. Pp. 567–584.

(a) On the assumptions that must be made as the case reaches this Court, respondents would have a right to obtain rescission if Gustafson's misstatements were made "by means of a prospectus or oral communication" related to a prospectus. Three sections of the 1933 Act are critical in resolving the issue whether the contract is a "prospectus": § 2(10), which defines a prospectus as "any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television" that offers any security for sale or confirms its sale; § 10, which specifies what information must be contained in a prospectus; and § 12, which imposes liability based on misstatements in a prospectus. The term

"prospectus" should be construed, if at all possible, to give it a consistent meaning throughout the Act. Pp. 567–568.

(b) The contract in this case is not a "prospectus" as that term is defined in § 10. Whatever else "prospectus" may mean, § 10 confines it to a document that, absent an overriding exemption, must include "information contained in the registration statement." By and large, only public offerings by an issuer or its controlling shareholders require the preparation and filing of such a statement. Thus, it follows that a prospectus is confined to such offerings. Since there is no dispute that the contract in question was not required to carry information contained in a registration statement, it also follows that the contract is not a prospectus under § 10. Pp. 568–570.

(c) The term "prospectus" has the same meaning and refers to the same types of communications in both §§ 10 and 12. The normal rule of statutory construction that identical words used in different parts of the same Act are intended to have the same meaning applies here. The Act's structure and § 12's language reinforce this view. In addition, since the primary innovation of the Act was the creation of federal duties—for the most part registration and disclosure obligations—in connection with public offerings, it is reasonable to conclude that the liability provisions were designed primarily to provide remedies for violations of these obligations rather than to conclude that § 12(2) creates vast additional liabilities that are quite independent of them. Congress would have been specific had it intended "prospectus" to have a different meaning in § 12. Pp. 570–573.

(d) The term "communication" in § 2(10)'s definition of "prospectus" does not mean that any written communication offering a security for sale is a "prospectus" for purposes of § 12. "Communication" is but one word in a list, which read in its entirety yields the interpretation that "prospectus" refers to a document soliciting the public to acquire securities. Respondents' argument to the contrary is inconsistent with two rules of statutory construction. First, this Court will avoid a reading which renders some words altogether redundant. However, reading "communication" to include every written communication would render "notice, circular, advertisement, [and] letter" redundant, since each is a form of written communication. A word is also known by the company it keeps. From the terms used in the list, it is apparent that "communication" refers to documents of wide dissemination. Similarly, the list includes radio and television communications but not face-to-face or telephonic conversations. Moreover, at the time the 1933 Act was passed, "prospectus" was a term of art understood to refer to a document soliciting the public to acquire securities. Pp. 573–576.

Syllabus

(e) The holding in this case draws support from the decision in *United States* v. *Naftalin*, 441 U. S. 768, that § 17(a)—which makes unlawful fraudulent transfers of securities—extends beyond the regulation of public offerings. That decision was based on § 17(a)'s language—which suggested no limitation of the scope of liability—and its legislative history—which showed that Congress made a deliberate departure from the Act's general scheme in § 17(a). In contrast, § 12(2)'s reference to "prospectus" limits its coverage to public offerings, and nothing in its legislative history hints that it was intended to effect expansion of the Act's coverage. Pp. 576–578.

(f) Statements by commentators and judges written after the Act was passed are not reliable indicators of what Congress intended. By and large, the writings presented in support of respondents' construction of the Act are of little value in determining the issue presented here: the extent of § 12(2)'s coverage. The Act's legislative history clearly indicates that Congress contemplated that § 12(2) would apply only to public offerings by an issuer or controlling shareholder, and nothing in that history suggests that Congress intended to create a formal prospectus required to comply with both §§ 10 and 12, and a second, less formal prospectus, to which only § 12 would be applicable. Pp. 578–584.

Reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, and SOUTER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, GINSBURG, and BREYER, JJ., joined, *post*, p. 584. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined, *post*, p. 596.

Donald W. Jenkins argued the cause for petitioners. With him on the briefs were *Harold C. Wheeler*, *Debra A. Winiarski*, *Thomas P. Desmond*, and *Jennifer R. Evans*.

Robert J. Kopecky argued the cause for respondents. With him on the brief were *Brian D. Sieve*, *Kenneth W. Starr*, and *Paul T. Cappuccio*.

Michael R. Dreeben argued the cause for the Securities and Exchange Commission as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Days*, *Deputy Solicitor General Kneedler*, *Simon M. Lorne*, *Paul*

Gonson, Jacob H. Stillman, Brian D. Bellardo, and *Mark Pennington.**

JUSTICE KENNEDY delivered the opinion of the Court.

Under § 12(2) of the Securities Act of 1933 buyers have an express cause of action for rescission against sellers who make material misstatements or omissions "by means of a prospectus." The question presented is whether this right of rescission extends to a private, secondary transaction, on the theory that recitations in the purchase agreement are part of a "prospectus."

I

Petitioners Gustafson, McLean, and Butler (collectively Gustafson) were in 1989 the sole shareholders of Alloyd, Inc., a manufacturer of plastic packaging and automatic heat sealing equipment. Alloyd was formed, and its stock was issued, in 1961. In 1989, Gustafson decided to sell Alloyd and engaged KPMG Peat Marwick to find a buyer. In response to information distributed by KPMG, Wind Point Partners II, L. P., agreed to buy substantially all of the issued and outstanding stock through Alloyd Holdings, Inc., a new corporation formed to effect the sale of Alloyd's stock. The shareholders of Alloyd Holdings were Wind Point and a number of individual investors.

In preparation for negotiating the contract with Gustafson, Wind Point undertook an extensive analysis of the company, relying in part on a formal business review prepared by

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**Robert L. Schnell, Jr., Wendy J. Wildung,* and *Stuart J. Kaswell* filed a brief for the Securities Industry Association, Inc., as *amicus curiae* urging reversal.

Patrick E. Cafferty and *Jonathan W. Cuneo* filed a brief for the National Association of Securities and Commercial Law Attorneys as *amicus curiae* urging affirmance.

Karen M. O'Brien filed a brief for North American Securities Administrators Association, Inc., as *amicus curiae.*

KPMG. Alloyd's practice was to take inventory at year's end, so Wind Point and KPMG considered taking an earlier inventory to use in determining the purchase price. In the end they did not do so, relying instead on certain estimates and including provisions for adjustments after the transaction closed.

On December 20, 1989, Gustafson and Alloyd Holdings executed a contract of sale. Alloyd Holdings agreed to pay Gustafson and his coshareholders $18,709,000 for the sale of the stock plus a payment of $2,122,219, which reflected the estimated increase in Alloyd's net worth from the end of the previous year, the last period for which hard financial data were available. Article IV of the purchase agreement, entitled "Representations and Warranties of the Sellers," included assurances that the company's financial statements "present fairly . . . the Company's financial condition" and that between the date of the latest balance sheet and the date the agreement was executed "there ha[d] been no material adverse change in . . . [Alloyd's] financial condition." App. 115, 117. The contract also provided that if the year-end audit and financial statements revealed a variance between estimated and actual increased value, the disappointed party would receive an adjustment.

The year-end audit of Alloyd revealed that Alloyd's actual earnings for 1989 were lower than the estimates relied upon by the parties in negotiating the adjustment amount of $2,122,219. Under the contract, the buyers had a right to recover an adjustment amount of $815,000 from the sellers. Nevertheless, on February 11, 1991, the newly formed company (now called Alloyd Co., the same as the original company) and Wind Point brought suit in the United States District Court for the Northern District of Illinois, seeking outright rescission of the contract under § 12(2) of the Securities Act of 1933 (1933 Act or Act). Alloyd (the new company) claimed that statements made by Gustafson and his coshareholders regarding the financial data of their company

were inaccurate, rendering untrue the representations and warranties contained in the contract. The buyers further alleged that the contract of sale was a "prospectus," so that any misstatements contained in the agreement gave rise to liability under § 12(2) of the 1933 Act. Pursuant to the adjustment clause, the defendants remitted to the purchasers $815,000 plus interest, but the adjustment did not cause the purchasers to drop the lawsuit.

Relying on the decision of the Court of Appeals for the Third Circuit in *Ballay* v. *Legg Mason Wood Walker, Inc.*, 925 F. 2d 682 (1991), the District Court granted Gustafson's motion for summary judgment, holding "that section 12(2) claims can only arise out of the initial stock offerings." App. 20. Although the sellers were the controlling shareholders of the original company, the District Court concluded that the private sale agreement "cannot be compared to an initial offering" because "the purchasers in this case had direct access to financial and other company documents, and had the opportunity to inspect the seller's property." *Id.*, at 21.

On review, the Court of Appeals for the Seventh Circuit vacated the District Court's judgment and remanded for further consideration in light of that court's intervening decision in *Pacific Dunlop Holdings Inc.* v. *Allen & Co. Inc.*, 993 F. 2d 578 (1993). In *Pacific Dunlop* the court reasoned that the inclusion of the term "communication" in the Act's definition of prospectus meant that the term "prospectus" was defined "very broadly" to include all written communications that offered the sale of a security. *Id.*, at 582. Rejecting the view of the Court of Appeals for the Third Circuit in *Ballay*, the Court of Appeals decided that § 12(2)'s right of action for rescission "applies to any communication which offers any security for sale . . . including the stock purchase agreement in the present case." 993 F. 2d, at 595. We granted certiorari to resolve this Circuit conflict, 510 U. S. 1176 (1994), and we now reverse.

II

The rescission claim against Gustafson is based upon § 12(2) of the 1933 Act, 48 Stat. 84, as amended, 15 U. S. C. § 77*l*(2). In relevant part, the section provides that any person who

> "offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraph (2) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,
>
> "shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security."

As this case reaches us, we must assume that the stock purchase agreement contained material misstatements of fact made by the sellers and that Gustafson would not sustain its burden of proving due care. On these assumptions, Alloyd would have a right to obtain rescission if those misstatements were made "by means of a prospectus or oral communication." The Courts of Appeals agree that the phrase "oral communication" is restricted to oral communications

that relate to a prospectus. See *Pacific Dunlop*, *supra*, at 588; *Ballay*, *supra*, at 688. The determinative question, then, is whether the contract between Alloyd and Gustafson is a "prospectus" as the term is used in the 1933 Act.

Alloyd argues that "prospectus" is defined in a broad manner, broad enough to encompass the contract between the parties. This argument is echoed by the dissents. See *post*, at 585–586 (opinion of THOMAS, J.); *post*, at 596 (opinion of GINSBURG, J.). Gustafson, by contrast, maintains that prospectus in the 1933 Act means a communication soliciting the public to purchase securities from the issuer. Brief for Petitioners 17–18.

Three sections of the 1933 Act are critical in resolving the definitional question on which the case turns: § 2(10), which defines a prospectus; § 10, which sets forth the information that must be contained in a prospectus; and § 12, which imposes liability based on misstatements in a prospectus. In seeking to interpret the term "prospectus," we adopt the premise that the term should be construed, if possible, to give it a consistent meaning throughout the Act. That principle follows from our duty to construe statutes, not isolated provisions. See *Philbrook* v. *Glodgett*, 421 U. S. 707, 713 (1975); *Kokoszka* v. *Belford*, 417 U. S. 642, 650 (1974).

A

We begin with § 10. It provides, in relevant part:

> "Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e) of this section—
>
> "(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement . . . ;
>
> "(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall

> contain the information contained in the registration statement . . . ." 15 U. S. C. § 77j(a).

Section 10 does not provide that some prospectuses must contain the information contained in the registration statement. Save for the explicit and well-defined exemptions for securities listed under § 3, see 15 U. S. C. § 77c (exempting certain classes of securities from the coverage of the Act), its mandate is unqualified: "[A] prospectus . . . shall contain the information contained in the registration statement."

Although § 10 does not define what a prospectus is, it does instruct us what a prospectus cannot be if the Act is to be interpreted as a symmetrical and coherent regulatory scheme, one in which the operative words have a consistent meaning throughout. There is no dispute that the contract in this case was not required to contain the information contained in a registration statement and that no statutory exemption was required to take the document out of § 10's coverage. Cf. 15 U. S. C. § 77c. It follows that the contract is not a prospectus under § 10. That does not mean that a document ceases to be a prospectus whenever it omits a required piece of information. It does mean that a document is not a prospectus within the meaning of that section if, absent an exemption, it need not comply with § 10's requirements in the first place.

An examination of § 10 reveals that, whatever else "prospectus" may mean, the term is confined to a document that, absent an overriding exemption, must include the "information contained in the registration statement." By and large, only public offerings by an issuer of a security, or by controlling shareholders of an issuer, require the preparation and filing of registration statements. See 15 U. S. C. §§ 77d, 77e, 77b(11). It follows, we conclude, that a prospectus under § 10 is confined to documents related to public offerings by an issuer or its controlling shareholders.

This much (the meaning of prospectus in § 10) seems not to be in dispute. Where the courts are in disagreement is

with the implications of this proposition for the entirety of the Act, and for § 12 in particular. Compare *Ballay* v. *Legg Mason Wood Walker, Inc.*, 925 F. 2d, at 688–689 (suggesting that the term "prospectus" is used in a consistent manner in both §§ 10 and 12), with *Pacific Dunlop Holdings Inc.* v. *Allen & Co.*, 993 F. 2d, at 584 (rejecting that view). We conclude that the term "prospectus" must have the same meaning under §§ 10 and 12. In so holding, we do not, as the dissent by JUSTICE GINSBURG suggests, make the mistake of treating § 10 as a definitional section. See *post*, at 597. Instead, we find in § 10 guidance and instruction for giving the term a consistent meaning throughout the Act.

The 1933 Act, like every Act of Congress, should not be read as a series of unrelated and isolated provisions. Only last Term we adhered to the "normal rule of statutory construction" that "identical words used in different parts of the same act are intended to have the same meaning." *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332, 342 (1994) (internal quotation marks and citations omitted); see also *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 230 (1993); *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932). That principle applies here. If the contract before us is not a prospectus for purposes of § 10—as all must and do concede—it is not a prospectus for purposes of § 12 either.

The conclusion that prospectus has the same meaning, and refers to the same types of communications (public offers by an issuer or its controlling shareholders), in both §§ 10 and 12 is reinforced by an examination of the structure of the 1933 Act. Sections 4 and 5 of the Act together require a seller to file a registration statement and to issue a prospectus for certain defined types of sales (public offerings by an issuer, through an underwriter). See 15 U. S. C. §§ 77d, 77e. Sections 7 and 10 of the Act set forth the information required in the registration statement and the prospectus.

See §§ 77g, 77j. Section 11 provides for liability on account of false registration statements; § 12(2) for liability based on misstatements in prospectuses. See 15 U. S. C. §§ 77k, 77*l*. Following the most natural and symmetrical reading, just as the liability imposed by § 11 flows from the requirements imposed by §§ 5 and 7 providing for the filing and content of registration statements, the liability imposed by § 12(2) cannot attach unless there is an obligation to distribute the prospectus in the first place (or unless there is an exemption).

Our interpretation is further confirmed by a reexamination of § 12 itself. The section contains an important guide to the correct resolution of the case. By its terms, § 12(2) exempts from its coverage prospectuses relating to the sales of government-issued securities. See 15 U. S. C. § 77*l* (excepting securities exempted by § 77c(a)(2)). If Congress intended § 12(2) to create liability for misstatements contained in any written communication relating to the sale of a security—including secondary market transactions—there is no ready explanation for exempting government-issued securities from the reach of the right to rescind granted by § 12(2). Why would Congress grant immunity to a private seller from liability in a rescission suit for no reason other than that the seller's misstatements happen to relate to securities issued by a governmental entity? No reason is apparent. The anomaly disappears, however, when the term "prospectus" relates only to documents that offer securities sold to the public by an issuer. The exemption for government-issued securities makes perfect sense on that view, for it then becomes a precise and appropriate means of giving immunity to governmental authorities.

The primary innovation of the 1933 Act was the creation of federal duties—for the most part, registration and disclosure obligations—in connection with public offerings. See, *e. g.*, *Ernst & Ernst* v. *Hochfelder*, 425 U. S. 185, 195 (1976) (the 1933 Act "was designed to provide investors with full disclosure of material information concerning public offerings");

Blue Chip Stamps v. *Manor Drug Stores*, 421 U. S. 723, 752 (1975) ("The 1933 Act is a far narrower statute [than the Securities Exchange Act of 1934 (1934 Act)] chiefly concerned with disclosure and fraud in connection with offerings of securities—primarily, as here, initial distributions of newly issued stock from corporate issuers"); *United States* v. *Naftalin*, 441 U. S. 768, 777–778 (1979) ("[T]he 1933 Act was primarily concerned with the regulation of new offerings"); *SEC* v. *Ralston Purina Co.*, 346 U. S. 119, 122, n. 5 (1953) ("'[T]he bill does not affect transactions beyond the need of public protection in order to prevent recurrences of demonstrated abuses'"), quoting H. R. Rep. No. 85, 73d Cong., 1st Sess., 7 (1933). We are reluctant to conclude that § 12(2) creates vast additional liabilities that are quite independent of the new substantive obligations the Act imposes. It is more reasonable to interpret the liability provisions of the 1933 Act as designed for the primary purpose of providing remedies for violations of the obligations it had created. Indeed, §§ 11 and 12(1)—the statutory neighbors of § 12(2)—afford remedies for violations of those obligations. See § 11, 15 U. S. C. § 77k (remedy for untrue statements in registration statements); § 12(1), 15 U. S. C. § 77*l*(1) (remedy for sales in violation of § 5, which prohibits the sale of unregistered securities). Under our interpretation of "prospectus," § 12(2) in similar manner is linked to the new duties created by the Act.

On the other hand, accepting Alloyd's argument that any written offer is a prospectus under § 12 would require us to hold that the word "prospectus" in § 12 refers to a broader set of communications than the same term in § 10. The Court of Appeals was candid in embracing that conclusion: "[T]he 1933 Act contemplates many definitions of a prospectus. Section 2(10) gives a single, broad definition; section 10(a) involves an isolated, distinct document—a prospectus within a prospectus; section 10(d) gives the Commission authority to classify many." *Pacific Dunlop Holdings Inc.* v.

Allen & Co., 993 F. 2d, at 584. The dissents take a similar tack. In the name of a plain meaning approach to statutory interpretation, the dissents discover in the Act two different species of prospectuses: formal (also called § 10) prospectuses, subject to both §§ 10 and 12, and informal prospectuses, subject only to § 12 but not to § 10. See *post*, at 598–599 (opinion of GINSBURG, J.); see also *post*, at 588–589 (opinion of THOMAS, J.). Nowhere in the statute, however, do the terms "formal prospectus" or "informal prospectus" appear. Instead, the Act uses one term—"prospectus"—throughout. In disagreement with the Court of Appeals and the dissenting opinions, we cannot accept the conclusion that this single operative word means one thing in one section of the Act and something quite different in another. The dissenting opinions' resort to terms not found in the Act belies the claim of fidelity to the text of the statute.

Alloyd, as well as JUSTICE THOMAS in his dissent, respond that if Congress had intended § 12(2) to govern only initial public offerings, it would have been simple for Congress to have referred to the § 4 exemptions in § 12(2). See Brief for Respondents 25–26; *post*, at 590 (THOMAS, J., dissenting). The argument gets the presumption backwards. Had Congress meant the term "prospectus" in § 12(2) to have a different meaning than the same term in § 10, that is when one would have expected Congress to have been explicit. Congressional silence cuts against, not in favor of, Alloyd's argument. The burden should be on the proponents of the view that the term "prospectus" means one thing in § 12 and another in § 10 to adduce strong textual support for that conclusion. And Alloyd adduces none.

B

Alloyd's contrary argument rests to a significant extent on § 2(10), or, to be more precise, on one word of that section. Section 2(10) provides that "[t]he term 'prospectus' means any prospectus, notice, circular, advertisement, letter, or

communication, written or by radio or television, which offers any security for sale or confirms the sale of any security." 15 U. S. C. § 77b(10). Concentrating on the word "communication," Alloyd argues that any written communication that offers a security for sale is a "prospectus." Inserting its definition into § 12(2), Alloyd insists that a material misstatement in any communication offering a security for sale gives rise to an action for rescission, without proof of fraud by the seller or reliance by the purchaser. In Alloyd's view, § 2(10) gives the term "prospectus" a capacious definition that, although incompatible with § 10, nevertheless governs in § 12.

The flaw in Alloyd's argument, echoed in the dissenting opinions, *post*, at 587 (opinion of THOMAS, J.); *post*, at 597 (opinion of GINSBURG, J.), is its reliance on one word of the definitional section in isolation. To be sure, § 2(10) defines a prospectus as, *inter alia*, a "communication, written or by radio or television, which offers any security for sale or confirms the sale of any security." 15 U. S. C. § 77b(10). The word "communication," however, on which Alloyd's entire argument rests, is but one word in a list, a word Alloyd reads altogether out of context.

The relevant phrase in the definitional part of the statute must be read in its entirety, a reading which yields the interpretation that the term "prospectus" refers to a document soliciting the public to acquire securities. We find that definition controlling. Alloyd's argument that the phrase "communication, written or by radio or television," transforms any written communication offering a security for sale into a prospectus cannot consist with at least two rather sensible rules of statutory construction. First, the Court will avoid a reading which renders some words altogether redundant. See *United States* v. *Menasche*, 348 U. S. 528, 538–539 (1955). If "communication" included every written communication, it would render "notice, circular, advertisement, [and] letter" redundant, since each of these are forms of writ-

ten communication as well. Congress with ease could have drafted § 2(10) to read: "The term 'prospectus' means any communication, written or by radio or television, that offers a security for sale or confirms the sale of a security." Congress did not write the statute that way, however, and we decline to say it included the words "notice, circular, advertisement, [and] letter" for no purpose.

The constructional problem is resolved by the second principle Alloyd overlooks, which is that a word is known by the company it keeps (the doctrine of *noscitur a sociis*). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961). The rule guided our earlier interpretation of the word "security" under the 1934 Act. The 1934 Act defines the term "security" to mean, *inter alia*, "any note." We concluded, nevertheless, that in context "the phrase 'any note' should not be interpreted to mean literally 'any note,' but must be understood against the background of what Congress was attempting to accomplish in enacting the Securities Acts." *Reves* v. *Ernst & Young*, 494 U. S. 56, 63 (1990). These considerations convince us that Alloyd's suggested interpretation is not the correct one.

There is a better reading. From the terms "prospectus, notice, circular, advertisement, [or] letter," it is apparent that the list refers to documents of wide dissemination. In a similar manner, the list includes communications "by radio or television," but not face-to-face or telephonic conversations. Inclusion of the term "communication" in that list suggests that it too refers to a public communication.

When the 1933 Act was drawn and adopted, the term "prospectus" was well understood to refer to a document soliciting the public to acquire securities from the issuer. See Black's Law Dictionary 959 (2d ed. 1910) (defining "prospectus" as a "document published by a company . . . or by per-

sons acting as its agents or assignees, setting forth the nature and objects of an issue of shares . . . and inviting the public to subscribe to the issue"). In this respect, the word "prospectus" is a term of art, which accounts for congressional confidence in employing what might otherwise be regarded as a partial circularity in the formal, statutory definition. See 15 U. S. C. § 77b(10) ("The term 'prospectus' means any prospectus . . ."). The use of the term "prospectus" to refer to public solicitations explains as well Congress' decision in § 12(2) to grant buyers a right to rescind without proof of reliance. See H. R. Rep. No. 85, 73d Cong., 1st Sess., 10 (1933) ("The statements for which [liable persons] are responsible, although they may never actually have been seen by the prospective purchaser, because of their wide dissemination, determine the market price of the security . . .").

The list of terms in § 2(10) prevents a seller of stock from avoiding liability by calling a soliciting document something other than a prospectus, but it does not compel the conclusion that Alloyd urges us to reach and that the dissenting opinions adopt. Instead, the term "written communication" must be read in context to refer to writings that, from a functional standpoint, are similar to the terms "notice, circular, [and] advertisement." The term includes communications held out to the public at large but that might have been thought to be outside the other words in the definitional section.

C

Our holding that the term "prospectus" relates to public offerings by issuers and their controlling shareholders draws support from our earlier decision interpreting the one provision of the Act that extends coverage beyond the regulation of public offerings, § 17(a) of the 1933 Act.* See *United*

*Section 17(a) provides:

"It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or com-

States v. *Naftalin*, 441 U. S. 768 (1979). In *Naftalin*, though noting that "the 1933 Act was primarily concerned with the regulation of new offerings," the Court held that § 17(a) was "intended to cover any fraudulent scheme in an offer or sale of securities, whether in the course of an initial distribution or in the course of ordinary market trading." The Court justified this holding—which it termed "a major departure from th[e] limitation [of the 1933 Act to new offerings]"—by reference to both the statutory language and the unambiguous legislative history. *Id.*, at 777–778. The same considerations counsel in favor of our interpretation of § 12(2).

The Court noted in *Naftalin* that § 17(a) contained no language suggesting a limitation on the scope of liability under § 17(a). See *id.*, at 778 ("[T]he statutory language . . . makes no distinctions between the two kinds of transactions"). Most important for present purposes, § 17(a) does not contain the word "prospectus." In contrast, as we have noted, § 12(2) contains language, *i. e.*, "by means of a prospectus or oral communication," that limits § 12(2) to public offerings. Just as the absence of limiting language in § 17(a) resulted in broad coverage, the presence of limiting language in § 12(2) requires a narrow construction.

Of equal importance, the legislative history relied upon in *Naftalin* showed that Congress decided upon a deliberate departure from the general scheme of the Act in this one instance, and "made abundantly clear" its intent that § 17(a) have broad coverage. See *ibid.* (quoting legislative history

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munication in interstate commerce or by the use of the mails, directly or indirectly—

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U. S. C. § 77q(a).

stating that "'fraud or deception in the sale of securities may be prosecuted regardless of whether . . . or not it is of the class of securities exempted under sections 11 or 12,'" S. Rep. No. 47, 73d Cong., 1st Sess., 4 (1933)). No comparable legislative history even hints that § 12(2) was intended to be a freestanding provision effecting expansion of the coverage of the entire statute. The intent of Congress and the design of the statute require that § 12(2) liability be limited to public offerings.

D

It is understandable that Congress would provide buyers with a right to rescind, without proof of fraud or reliance, as to misstatements contained in a document prepared with care, following well-established procedures relating to investigations with due diligence and in the context of a public offering by an issuer or its controlling shareholders. It is not plausible to infer that Congress created this extensive liability for every casual communication between buyer and seller in the secondary market. It is often difficult, if not altogether impractical, for those engaged in casual communications not to omit some fact that would, if included, qualify the accuracy of a statement. Under Alloyd's view any casual communication between buyer and seller in the aftermarket could give rise to an action for rescission, with no evidence of fraud on the part of the seller or reliance on the part of the buyer. In many instances buyers in practical effect would have an option to rescind, impairing the stability of past transactions where neither fraud nor detrimental reliance on misstatements or omissions occurred. We find no basis for interpreting the statute to reach so far.

III

The Securities and Exchange Commission (SEC), as *amicus*, and JUSTICE GINSBURG in dissent, rely on what they

call the legislative background of the Act to support Alloyd's construction. With a few minor exceptions, however, their reliance is upon statements by commentators and judges written after the Act was passed, not while it was under consideration. See Brief for SEC as *Amicus Curiae* 19–23; *post,* at 599–601 (GINSBURG, J., dissenting). Material not available to the lawmakers is not considered, in the normal course, to be legislative history. After-the-fact statements by proponents of a broad interpretation are not a reliable indicator of what Congress intended when it passed the law, assuming extratextual sources are to any extent reliable for this purpose.

The SEC does quote one contemporaneous memorandum prepared by Dean Landis. See Brief for SEC as *Amicus Curiae* 13–14 (citing James M. Landis, Reply to Investment Bankers Association Objections of May 5, 1933, p. 5). The statement is quite consistent with our construction. Landis observed that, in contrast to the liabilities imposed by the Act "'that flow from the fact of non-registration or registration,'" dealings may violate § 12(2) "'even though they are not related to the *fact* of registration.'" See Brief for SEC as *Amicus Curiae* 13 (emphasis added). This, of course, is true. The liability imposed by § 12(2) has nothing to do with the *fact* of registration, that is, with the failure to file a registration statement that complies with §§ 7 and 11 of the Act. Instead, the liability imposed by § 12(2) turns on misstatements contained in the prospectus. And, one might point out, securities exempted by § 3 of the Act do not require registration, although they are covered by § 12. Landis' observation has nothing to do with the question presented here: whether a prospectus is a document soliciting the public to purchase securities from the issuer.

The SEC also relies on a number of writings, the most prominent a release by the Federal Trade Commission, stating that § 12(2) applied to securities outstanding on the effective date of the 1933 Act. See *id.*, at 19–20. Again, this

is an issue not in dispute. Although the Act as passed exempted securities from registration if sold by the issuer within 60 days of the passage of the Act, see 1933 Securities Act, § 3(a)(1), the limitation did not apply to § 12(2). See 15 U. S. C. § 77*l*. Instead, actions brought under § 12(2) are subject to the limitation of actions provision in § 13. See 15 U. S. C. § 77m (one year from the date of discovery). A buyer who discovered a material omission in a prospectus after the passage of the Act could sue for rescission under § 12(2) even though the prospectus had been issued before enactment of the statute. This tells us nothing one way or the other, however, about whether the term "prospectus" is limited to a document soliciting the public to purchase securities from the issuer.

In large measure the writings on which both the SEC and JUSTICE GINSBURG rely address a question on which there is no disagreement, that is, "to what securities does § 12(2) apply?" We agree with the SEC that § 12(2) applies to every class of security (except one issued or backed by a governmental entity), whether exempted from registration or not, and whether outstanding at the time of the passage of the Act or not. The question before us is the coverage of § 12(2), and the writings offered by the SEC are of little value on this point.

If legislative history is to be considered, it is preferable to consult the documents prepared by Congress when deliberating. The legislative history of the Act concerning the precise question presented supports our interpretation with much clarity and force. Congress contemplated that § 12(2) would apply only to public offerings by an issuer (or a controlling shareholder). The House Report stated: "The bill affects only new offerings of securities . . . . It does not affect the ordinary redistribution of securities unless such redistribution takes on the characteristics of a new offering." H. R. Rep. No. 85, 73d Cong., 1st Sess., 5 (1933). The observation extended to § 12(2) as well. Part II, § 6 of the

House Report is entitled "Civil Liabilities." See *id.*, at 9. It begins: "Sections 11 and 12 create and define the civil liabilities imposed by the act . . . . Fundamentally, these sections entitle the buyer of securities sold upon a registration statement . . . to sue for recovery of his purchase price." *Ibid.* It will be recalled that as to private transactions, such as the Alloyd purchase, there will never have been a registration statement. If § 12(2) liability were imposed here, it would cover transactions not within the contemplated reach of the statute.

Even more important is the Report's discussion, and justification, of the liabilities arising from omissions and misstatements in "the prospectus":

> "The Committee emphasizes that these liabilities attach only when there has been an untrue statement of material fact or an omission to state a material fact in the registration statement or the prospectus—the basic information by which the public is solicited. All who sell securities with such a flaw, who cannot prove that they did not know—or who in the exercise of due care could not have known—of such misstatement or omission, are liable under sections 11 and 12. For those whose moral responsibility to the public is particularly heavy, there is a correspondingly heavier legal liability—the persons signing the registration statement, the underwriters, the directors of the issuer, the accountants, engineers, appraisers, and other professionals preparing and giving authority to the prospectus—all these are liable to the buyer . . . if they cannot prove [the use of due care]. This throws upon originators of securities a duty of competence as well as innocence . . . ." *Ibid.*

The House Report thus states with clarity and with specific reference to § 12 that § 12 liability is imposed only as to a document soliciting the public.

In light of the care that Congress took to justify the imposition of liability without proof of either fraud or reliance on "those whose moral responsibility to the public is particularly heavy"—the "originators of securities"—we cannot conclude that Congress would have extended that liability to every private or secondary sale without a whisper of explanation. The conspicuous absence in the legislative history is not the absence of an explicit statement that § 12(2) applied only to public offerings, see *post*, at 600 (GINSBURG, J., dissenting), but the lack of any explicit reference to the creation of liability for private transactions.

JUSTICE GINSBURG argues that the omission from the 1933 Act of the phrase "offering to the public" that appeared in the definition of "prospectus" in the British Companies Act of 1929 suggests that the drafters of the American bill intended to expand its coverage. See *post*, at 599–600 (dissenting opinion). We consider it more likely that the omission reflected instead the judgment that the words "offering to the public" were redundant in light of the understood meaning of "prospectus." Far from suggesting an intent to depart in a dramatic way from the balance struck in the British Companies Act, the legislative history suggests an intent to maintain it. In the context of justifying the "civil liabilities" provisions that hold "all those responsible for statements upon the face of which the public is solicited . . . to standards like those imposed by law upon a fiduciary," the House Report stated: "The demands of this bill call for the assumption of no impossible burden, nor do they involve any leap into the dark. Similar requirements have for years attended the business of issuing securities in other industrialized nations." H. R. Rep. No. 85, at 5. So, too, the Report provided: "The committee is fortified in these sections [that is, §§ 11 and 12] by similar safeguards in the English Companies Act of 1929. What is deemed necessary for sound financing in conservative England ought not be unnecessary

for the more feverish pace which American finance has developed." *Id.*, at 9. These passages confirm that the civil liability provisions of the 1933 Act, §§ 11 and 12, impose obligations on those engaged in "the business of issuing securities," in conformance, not in contradiction to, the British example.

Nothing in the legislative history, moreover, suggests Congress intended to create two types of prospectuses, a formal prospectus required to comply with both §§ 10 and 12, and a second, less formal prospectus, to which only § 12 would be applicable. The Act proceeds by definitions more stable and precise. The legislative history confirms what the text of the Act dictates: § 10's requirements govern all prospectuses defined by § 2(10) (although, as we pointed out earlier, certain classes of securities are exempted from § 10 by operation of § 3). In discussing § 10, the House Report stated:

> "Section 10 of the bill requires that any 'prospectus' used in connection with the sale of any securities, if it is more than a mere announcement of the name and price of the issue offered and an offer of full details upon request [the exception codified at § 2(10)(b)], must include a substantial portion of the information required in the 'registration statement.' . . .
>
> "'Prospectus' is defined in section 2(1) [now § 2(10)] to include 'any prospectus, notice, circular, advertisement, letter, or other communication offering any security for sale.'
>
> "The purpose of these sections is to secure for potential buyers the means of understanding the intricacies of the transaction into which they are invited." *Id.*, at 8.

Nothing in the Report suggests that Congress thought that § 10 would apply only to formal prospectuses required to be produced by § 5. See 15 U. S. C. § 77e. Cf. *post*, at 589 (THOMAS, J., dissenting). The Report undermines the dis-

sents' self-contradicting conclusion that the contract here is a prospectus under § 2(10) even though not subject to the requirements of § 10.

* * *

In sum, the word "prospectus" is a term of art referring to a document that describes a public offering of securities by an issuer or controlling shareholder. The contract of sale, and its recitations, were not held out to the public and were not a prospectus as the term is used in the 1933 Act.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

From the majority's opinion, one would not realize that § 12(2) of the Securities Act of 1933 (1933 Act or Act) was involved in this case until one had read more than halfway through. In contrast to the majority's approach of interpreting the statute, I believe the proper method is to begin with the provision actually involved in this case, § 12(2), and then turn to the 1933 Act's definitional section, § 2(10), before consulting the structure of the Act as a whole. Because the result of this textual analysis shows that § 12(2) applies to secondary or private sales of a security as well as to initial public offerings, I dissent.

I

A

As we have emphasized in our recent decisions, "'[t]he starting point in every case involving construction of a statute is the language itself.'" *Landreth Timber Co.* v. *Landreth*, 471 U. S. 681, 685 (1985) (quoting *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 756 (1975) (Powell, J.,

concurring)). See also *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 173–175 (1994). Unfortunately, the majority has decided to interpret the word "prospectus" in § 12(2) by turning to sources outside the four corners of the statute, rather than by adopting the definition provided by Congress.

Section 12(2) creates a cause of action when the seller of a security makes a material omission or misstatement to the buyer by means of a prospectus or oral communication. If the seller acted negligently in making the misstatements, the buyer may sue to rescind the sale. I agree with the majority that the only way to interpret § 12(2) as limited to initial offerings is to read "by means of a prospectus or oral communication" narrowly. I also agree that in the absence of any other statutory command, one could understand "prospectus" as "a term of art which describes the transmittal of information concerning the sale of a security in an initial distribution." But the canon that "we construe a statutory term in accordance with its ordinary or natural meaning" applies only "[i]n the absence of [a statutory] definition." *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994).

There is no reason to seek the meaning of "prospectus" outside of the 1933 Act, because Congress has supplied just such a definition in § 2(10). That definition is extraordinarily broad:

> "When used in this subchapter, unless the context otherwise requires—
>
> . . . . .
>
> "(10) The term 'prospectus' means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security." 15 U. S. C. § 77b(10).

For me, the breadth of these terms forecloses the majority's position that "prospectus" applies only in the context of ini-

tial distributions of securities. Indeed, § 2(10)'s inclusion of a prospectus as only one of the many different documents that qualify as a "prospectus" for statutory purposes indicates that Congress intended "prospectus" to be more than a mere "term of art." Likewise, Congress' extension of prospectus to include documents that merely *confirm* the sale of a security underscores Congress' intent to depart from the term's ordinary meaning. Section 2(10)'s definition obviously concerns different types of communications rather than different types of transactions. Congress left the job of exempting certain classes of transactions to §§ 3 and 4, not to § 2(10). We should use § 2(10) to define "prospectus" for the 1933 Act, rather than, as the majority does, use the 1933 Act to define "prospectus" for § 2(10).

The majority seeks to avoid this reading by attempting to create ambiguities in § 2(10). According to the majority, the maxim *noscitur a sociis* (a word is known by the company it keeps) indicates that the circulars, advertisements, letters, or other communications referred to by § 2(10) are limited by the first word in the list: "prospectus." Thus, we are told that these words define the forms a prospectus may take, but the covered communications still must be "prospectus-like" in the sense that they must relate to an initial public offering. *Noscitur a sociis*, however, does not require us to construe *every* term in a series narrowly because of the meaning given to just one of the terms. See *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, 519 (1923); cf. *Reves* v. *Ernst & Young*, 494 U. S. 56, 64 (1990).

The majority uses the canon in an effort to *create* doubt, not to *reduce* it. The canon applies only in cases of ambiguity, which I do not find in § 2(10). "*Noscitur a sociis* is a well established and useful rule of construction where words are of obscure or doubtful meaning; and then, but only then, its aid may be sought to remove the obscurity or doubt by reference to the associated words." *Russell*, *supra*, at 520. There is obvious breadth in "notice, circular, advertisement,

letter, or communication, written or by radio or television." To read one word in a long list as controlling the meaning of all the other words would defy common sense; doing so would prevent Congress from giving effect to expansive words in a list whenever they are combined with one word with a more restricted meaning. Section 2(10)'s very exhaustiveness suggests that "prospectus" is merely the first item in a long list of covered documents, rather than a brooding omnipresence whose meaning cabins that of all the following words. The majority also argues that a broad definition of prospectus makes much of § 2(10) redundant. See *ante*, at 574–575. But the majority fails to see that "communication, written or by radio or television," is a catchall. It operates as a safety net that Congress used to sweep up anything it had forgotten to include in its definition. This is a technique Congress employed in several other provisions of the 1933 Act and the Securities Exchange Act of 1934 (1934 Act). See, *e. g.*, 15 U. S. C. § 77b(1) ("term 'security' means any note, stock, treasury stock, bond, debenture . . . or, in general, any interest or instrument commonly known as a 'security' "); § 77b(9) ("term 'write' or 'written' shall include printed, lithographed, or any means of graphic communication"); § 78c(a)(6) ("term 'bank' means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution"). In fact, it is the majority's approach that creates redundancies. The majority cannot account for Congress' decision to begin its definition of "prospectus" with the term "prospectus," which is then followed by the rest of § 2(10)'s list. As a result, the majority must conclude that the use of the term is a "partial circularity," *ante*, at 576, a reading that deprives the word of its meaning.

B

The majority correctly argues that other sections of the 1933 Act employ a narrower understanding of "prospectus"

as a document related to an initial public offering. See § 10 of the 1933 Act, 15 U. S. C. § 77j(a)(3) (detailing information required in prospectus); § 5 of the 1933 Act, 15 U. S. C. § 77e(b) (requiring prospectus to be sent to buyers). In fact, the majority builds its entire argument on the proposition that it must give "prospectus" the same meaning in both §§ 10 and 12. Since § 10 assumes a narrower definition of prospectus, the majority believes that its definition must control that of § 12. Although the majority denies that it reads § 10 as a definitional section, it admits that § 10 "does instruct us what a prospectus cannot be if the Act is to be interpreted as a symmetrical and coherent regulatory scheme." *Ante*, at 569.

I agree with the majority that §§ 5 and 10 cannot embrace fully the broad definition of prospectus supplied by § 2(10) and used by § 12(2). I also recognize the general presumption that a given term bears the same meaning throughout a statute. See *Brown* v. *Gardner*, *ante*, at 118. But this presumption is overcome when Congress indicates otherwise. Here, there are several indications that Congress did not use the word "prospectus" in the same sense throughout the statute. First, § 2(10) defines "prospectus" to include not only a document that "offers any security for sale" (which is consistent with the majority's reading), but also one that "confirms the sale of any security." But the majority does not claim that § 10 uses the term "prospectus" to include confirmation slips. It would be radical to say that every confirmation slip must contain all the information that § 10 requires; only the documents accompanying an initial public offering must contain that information. Despite the majority's protestations, it is absolutely clear that the 1933 Act uses "prospectus" in two different ways. As a result, any justification for the majority's twisted reading of § 2(10) disappears.

Second, this understanding is reinforced by § 2's preface that its definitions apply "unless the context otherwise re-

quires," 15 U. S. C. § 77b. This phrase indicates that Congress intended simply to provide a "default" meaning for "prospectus." Further, nothing in § 12(2) indicates that the "context otherwise requires" the use of a definition of "prospectus" other than the one provided by § 2(10). If anything, it is § 10's "context" that seems to require the use of a definition that is different from that of § 2(10).

Third, the dual use of "prospectus" in § 2(10), which both defines "prospectus" broadly and uses it as a term of art, makes clear that the statute is using the word in at least two different senses, and paves the way for such variations in the ensuing provisions. To adopt the majority's argument would force us to eliminate § 2(10) in favor of some narrower, common-law definition of "prospectus." Our mandate to interpret statutes does not allow us to recast Congress' handiwork so completely.

The majority transforms § 10 into the tail that wags the 1933 Act dog. An analogy will illustrate the point. Suppose that the Act regulates cars, and that § 2(10) of the Act defines a "car" as any car, motorcycle, truck, or trailer. Section 10 of this hypothetical statute then declares that a car shall have seatbelts, and § 5 states that it is unlawful to sell cars without seatbelts. Section 12(2) of this Act then creates a cause of action for misrepresentations that occur during the sale of a car. It is reasonable to conclude that §§ 5 and 10 apply only to what we ordinarily refer to as "cars," because it would be absurd to require motorcycles and trailers to have seatbelts. But the majority's reasoning would lead to the further conclusion that § 12(2) does not cover sales of motorcycles, when it is clear that the Act includes such sales.

C

Contrary to the majority's conclusion, it seems to me that the surrounding text of § 12(2) supports my reading. On its face, § 12(2) makes none of the usual distinctions between initial public offerings and aftermarket trading, or between

public trading and privately negotiated sales. The provision does not mention initial public offerings, as do other provisions of the Act. See, *e. g.*, § 4 of the 1933 Act, 15 U. S. C. § 77d(2) (exempting "transactions by an issuer not involving any public offering"). Nor did Congress limit § 12(2) to issuers, as it chose to do with other provisions that are limited to initial distributions. See § 11 of the 1933 Act, 15 U. S. C. § 77k(a)(2) (holding liable for a false registration statement "every person who was a director of . . . or partner in the issuer" at time of filing). Instead, § 12(2) refers more broadly to "any person who . . . offers or sells a security."[1] If, as the majority suggests, Congress had intended to limit § 12(2) to initial public offerings, it presumably would have used words such as "issuer," "public offering," or "private," or "resale," or at least discussed trading on the exchanges or the liability of dealers, underwriters, and issuers. But on this score, § 12(2) is notable for its silence.

I assume that when Congress chose to define liability under the securities laws, it used precise language that it was familiar with to make its meaning clear. Just last Term, in holding that § 10(b) of the 1934 Act did not create liability for aiders and abettors, we said: "If . . . Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text. But it did not." *Central Bank of Denver*, 511 U. S., at 177. This rule of construction can cut both ways. If in *Central Bank of Denver* Congress' failure to use "aid" or "abet" limited liability under the securities laws, then here the absence of "public offering," "issuers," or some similar limitation surely suggests that Congress sought to extend § 12(2) to private and secondary transactions.

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[1] "Sell" is defined broadly to include "every contract of sale or disposition of a security or interest in a security, for value," while "offer" refers to "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U. S. C. § 77b(3).

The dearth of limiting language in § 12(2) is all the more striking in light of the 1933 Act's detailed exemption provisions. Section 4 of the 1933 Act, appropriately entitled "Exempted Transactions," specifically excludes from § 5's registration requirements both "transactions by any person other than an issuer, underwriter, or dealer" and "transactions by an issuer not involving any public offering." 15 U. S. C. §§ 77d(1) and (2). If Congress had intended § 12(2) to govern only initial public offerings, it would have been simple for Congress to have referred to the § 4 exemptions in § 12(2). As we have noted, "although § 4(2) of the 1933 Act . . . exempts transactions not involving any public offering from the Act's registration provisions, there is no comparable exemption from the antifraud provisions." *Landreth Timber Co.*, 471 U. S., at 692. Section 12(2)'s explicit exception only for government securities shows that Congress knew how to exempt certain securities and transactions when it wanted to.

The majority argues that § 4's exemption suggests a contrary conclusion. *Ante*, at 573. According to the majority, if Congress had intended § 12(2) to apply to private, secondary transactions, it would have said so explicitly. This reasoning goes too far, for it would render § 4 superfluous. After all, if the majority applied its approach to § 5 (which prohibits the sale of a security without first registering the security or without first sending a prospectus), then it would conclude—even in the absence of § 4—that § 5 refers only to initial offerings. But this would have precluded any need to include § 4 at all.

The majority claims that under my reading, "there is no ready explanation for exempting" government securities from § 12(2). *Ante*, at 571. But Congress could have concluded that it was unnecessary to impose liability on the private or secondary sellers of a government security because information concerning government securities is already available either from the markets or from government enti-

ties. Or Congress could have chosen not to burden government securities with the costs that might accrue from additional liabilities on initial or secondary sales.

II

The majority argues that the 1933 Act's central focus on initial public offerings requires us to read its provisions as extending only to those distributions. We have recognized, however, that not all of the provisions of the 1933 Act are limited to initial public offerings, nor are all of the provisions of the 1934 Act limited to secondary transactions. Thus, § 10(b) of the 1934 Act and Securities and Exchange Commission (SEC) Rule 10b–5 reach both initial and secondary distributions. Similarly, we have held that § 17 of the 1933 Act reaches beyond initial distributions to aftermarket trading. *United States* v. *Naftalin*, 441 U. S. 768 (1979).

In reaching our holding in *Naftalin*, we rejected two arguments relevant here. First, we were not swayed by the contention that the structure of the 1933 Act limited § 17 to new issues. As we noted, the statutory language "makes no distinctions between the two kinds of transactions [initial distributions and ordinary market trading]." *Id.*, at 778. Second, the 1934 Act's prohibition of fraud in the secondary sale of securities did not lead us to infer that the 1933 Act's provisions apply solely to new offerings. "'The fact that there may well be some overlap is neither unusual nor unfortunate.'" *Ibid.* (quoting *SEC* v. *National Securities, Inc.*, 393 U. S. 453, 468 (1969)).

Here, § 12(2) contains no distinction between initial and secondary transactions, or public and private sales. Thus, if the majority wished to remain faithful to *Naftalin*, it would hold that the provision reaches both secondary and private transactions. To be sure, § 10(b) of the 1934 Act, 15 U. S. C. § 78j(b), and SEC Rule 10b–5 provide a cause of action for misstatements made in connection with secondary and private securities transactions. However, "it is hardly a novel

proposition that the [1933 and 1934 Acts] 'prohibit some of the same conduct.'" *Herman & MacLean* v. *Huddleston*, 459 U. S. 375, 383 (1983). *Naftalin* counsels the Court to reject arguments that we should read § 12(2) narrowly in order to avoid redundancy in securities regulation. 441 U. S., at 778.

In fact, it is quite possible that the Congress of 1933–1934 originally intended no overlap between § 12(2) and the 1934 Act, but instead expected § 12(2) to serve as the *only* cause of action for the private or secondary sale of securities. As we have noted before, neither the text of § 10(b) nor that of SEC Rule 10b–5 provides for private claims, and "we have made no pretense that it was Congress' design to provide the remedy afforded." *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U. S. 350, 359 (1991). Only § 12(2) explicitly provided a broad remedy for private or aftermarket sales. It seems unlikely that Congress would have failed to provide *any* cause of action for investors based on misstatements in market transactions. 9 L. Loss & J. Seligman, Securities Regulation 4220 (3d ed. 1992).

Instead of reading *Naftalin* properly, the majority attempts to narrow the case to its facts. According to the majority, *Naftalin* requires that no provision of the 1933 Act should be interpreted to extend liability to secondary transactions unless either the statutory language or the legislative history clearly indicate that Congress intends to do so. If anything, *Naftalin* implements the opposite rule: that a provision of the 1933 Act extends to both initial offerings and secondary trading unless the text makes a "distinctio[n] between the two kinds of transactions." 441 U. S., at 778. In any event, the statutory language seems clear enough to me.[2]

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[2] The majority responds that the legislative history must also clearly indicate that Congress intended to expand liability. *Naftalin* itself imposed no such requirement. Moreover, the legislative history relied upon by the majority and by the Court in *Naftalin* does not support the conclu-

III

The majority's analysis of § 12(2) is motivated by its policy preferences. Underlying its reasoning is the assumption that Congress could never have intended to impose liability on sellers engaged in secondary transactions. Adopting a chiding tone, the majority states that "[w]e are reluctant to conclude that § 12(2) creates vast additional liabilities that are quite independent of the new substantive obligations that the Act imposes." *Ante*, at 572. Yet, this is exactly what Congress did in § 17(a) of the 1933 Act as well as in § 10(b) of the 1934 Act. Later, the majority says: "It is not plausible to infer that Congress created this extensive liability for every casual communication between buyer and seller in the secondary market." *Ante*, at 578. It is not the usual practice of this Court to require Congress to explain why it has chosen to pursue a certain policy. Our job simply is to apply the policy, not to question it.

I share the majority's concern that extending § 12(2) to secondary and private transactions might result in an unwanted increase in securities litigation. But it is for Congress, and not for this Court, to determine the desired level of securities liability. As we said last Term in *Central Bank of Denver*, policy considerations " 'cannot override our interpretation of the text and structure of the Act, except to the extent that they may help to show that adherence to the text and structure would lead to a result 'so bizarre' that Con-

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sion that Congress wanted to extend § 17(a) to secondary sales. The passage cited by the majority and by *Naftalin*, S. Rep. No. 47, 73d Cong., 1st Sess., 4 (1933), see *ante*, at 577–578, was unrelated to § 17(a), and instead discussed a Senate proposal which was replaced by the House bill as the basis for the 1933 Act. In fact, the §§ 11 and 12 referred to in the Senate Report were originally extensive exemption, rather than liability, provisions that did not survive the legislative process. See S. 875, 73d Cong., 1st Sess., 20–24 (1933). The majority's approach seriously undermines this Court's holding and methodology in *Naftalin*.

gress could not have intended it.'" 511 U. S., at 188 (quoting *Demarest* v. *Manspeaker*, 498 U. S. 184, 191 (1991)). The majority is concerned that a contrary reading would have a drastic impact on the thousands of private and secondary transactions by imposing new liabilities and new transaction costs. But the majority forgets that we are only enforcing *Congress'* decision to impose such standards of conduct and remedies upon sellers. If the majority believes that § 12(2)'s requirements are too burdensome for the securities markets, it must rely upon the other branches of Government to limit the 1933 Act.

Unfortunately, the majority's decision to pursue its policy preferences comes at the price of disrupting the process of statutory interpretation. The majority's method turns on its head the commonsense approach to interpreting legal documents. The majority begins by importing a definition of "prospectus" from beyond the four corners of the 1933 Act that fits the precise use of the term in § 10. Initially ignoring the definition of "prospectus" provided at the beginning of the statute by Congress, the majority finally discusses § 2(10) to show that it does not utterly preclude its preferred meaning. Only then does the majority decide to parse the language of the provision at issue. However, when one interprets a contract provision, one usually begins by reading the provision, and then ascertaining the meaning of any important or ambiguous phrases by consulting any definitional clauses in the contract. Only if those inquiries prove unhelpful does a court turn to extrinsic definitions or to structure. I doubt that the majority would read in so narrow and peculiar a fashion most other statutes, particularly one intended to restrict causes of action in securities cases.

The majority's methodology also has the effect of frustrating Congress' will. In the majority's view, there seems to be little reason for Congress to have defined "prospec-

tus," or to have included a § 2 definition at all. If all the key words of the 1933 Act are to be defined by the meanings imparted to them by the securities industry, there should be no need for Congress to attempt to define them by statute. The majority does not permit Congress to implement its intent unless it does so exactly as the Court wants it to.

For the foregoing reasons, I respectfully dissent.

JUSTICE GINSBURG, with whom JUSTICE BREYER joins, dissenting.

A seller's misrepresentation made "by means of a prospectus or oral communication" is actionable under § 12(2) of the Securities Act of 1933, 15 U. S. C. § 77*l*(2). To limit the scope of this civil liability provision, the Court maintains that a communication qualifies as a prospectus only if made during a public offering.[1] Communications during either secondary trading or a private placement are not "prospectuses," the Court declares, and thus are not covered by § 12(2).

As JUSTICE THOMAS persuasively demonstrates, the statute's language does not support the Court's reading. Section 12(2) contains no terms expressly confining the provision to public offerings, and the statutory definition of "prospectus"—"any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security," § 2(10), 15 U. S. C. § 77b(10)—is capacious.

The Court presents impressive policy reasons for its construction, but drafting history and the longstanding scholarly and judicial understanding of § 12(2) caution against judicial resistance to the statute's defining text. I would leave any alteration to Congress.

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[1] I understand the Court's definition of a public offering to encompass both transactions that must be registered under § 5, 15 U. S. C. § 77e, and transactions that would have been registered had the securities involved not qualified for exemption under § 3, 15 U. S. C. § 77c.

I

To construe a legislatively defined term, courts usually start with the defining section. Section 2(10) defines prospectus capaciously as "any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security," 15 U. S. C. § 77b(10). The items listed in the defining provision, notably "letters" and "communications," are common in private and secondary sales, as well as in public offerings. The § 2(10) definition thus does not confine the § 12(2) term "prospectus" to public offerings.

The Court bypasses § 2(10), and the solid support it gives the Court of Appeals' disposition. Instead of beginning at the beginning, by first attending to the definition section, the Court starts with § 10, 15 U. S. C. § 77j, a substantive provision. See *ante*, at 568–569. The Court correctly observes that the term "prospectus" has a circumscribed meaning in that context. A prospectus within the contemplation of § 10 is a formal document, typically a document composing part of a registration statement; a § 10 prospectus, all agree, appears only in public offerings. The Court then proceeds backward; it reads into the literally and logically prior definition section, § 2(10), the meaning "prospectus" has in § 10.

To justify its backward reading—proceeding from § 10 to § 2(10) and not the other way round—the Court states that it "cannot accept the conclusion that [the operative word 'prospectus'] means one thing in one section of the Act and something quite different in another." See *ante*, at 573. Our decisions, however, constantly recognize that "a characterization fitting in certain contexts may be unsuitable in others." *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.*, *ante*, at 262. In *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427 (1932), we held that the word "trade" has a more encompassing meaning in

§ 3 than in § 1 of the Sherman Act, see *id.*, at 433–435, and explained:

> "Undoubtedly, there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning. . . . But the presumption is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. . . .
>
> "It is not unusual for the same word to be used with different meanings in the same act, and there is no rule of statutory construction which precludes the courts from giving to the word the meaning which the legislature intended it should have in each instance." *Id.*, at 433.

See also Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333, 337 (1933) ("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.").

According "prospectus" discrete meanings in § 10 and § 12(2) is consistent with Congress' specific instruction in § 2 that definitions apply "unless the context otherwise requires," 15 U. S. C. § 77b. As the Court of Appeals construed the Act, § 2(10)'s definition of "prospectus" governs § 12(2), which accommodates without strain the definition's broad reach; by contrast, the specific context of § 10 requires a correspondingly specific reading of "prospectus."

Indeed, in the Investment Company Act of 1940, Congress explicitly recognized that the Securities Act uses "prospectus" in two different senses—one in § 10, and another in the rest of the Act:

"'Prospectus,' as used in [§ 22 of the Investment Company Act], means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 . . . and currently in use. As used elsewhere, 'prospectus' means a prospectus as defined in the Securities Act of 1933." § 2(31), 54 Stat. 794, as amended, 15 U. S. C. § 80a–2(31).[2]

II

Most provisions of the Securities Act govern only public offerings, and the legislative history pertaining to the Act as a whole shares this orientation. See *ante*, at 580 (citing H. R. Rep. No. 85, 73d Cong., 1st Sess., 5 (1933)). Section 17(a) of the Act, 15 U. S. C. § 77q(a), however, is not limited to public offerings; that enforcement provision, this Court has recognized, also covers secondary trading. See *United States* v. *Naftalin*, 441 U. S. 768 (1979). The drafting history is at least consistent with the conclusion that § 12(2), like § 17(a), is not limited to public offerings.

The drafters of the Securities Act modeled this federal legislation on the British Companies Act, 19 & 20 Geo. 5, ch. 23 (1929). See Landis, The Legislative History of the Securities Act of 1933, 28 Geo. Wash. L. Rev. 29, 34 (1959) (Landis and the other drafters "determined to take as the base of [their] work the English Companies Act"); see also *SEC* v. *Ralston Purina Co.*, 346 U. S. 119, 123 (1953) (characterizing the Companies Act as a "statutory anteceden[t]" of federal securities laws). The Companies Act defined "prospectus" as "any prospectus, notice, circular, advertisement, or other invitation, *offering to the public* for subscription or purchase any shares or debentures of a company," 19 & 20 Geo. 5, ch. 23, § 380(1) (1929) (emphasis added). Though the drafters of the Securities Act borrowed the first four

[2] Although the Court finds our reading of § 2(10) redundant, see *ante*, at 574–575, the Court recognizes that Congress built redundancy into the definition by defining a "prospectus" as a "prospectus." See *ante*, at 575–576.

terms of this definition, they did not import from the British legislation the language limiting prospectuses to communications "offering [securities] to the public." This conspicuous omission suggests that the drafters intended the defined term "prospectus" to reach beyond communications used in public offerings.[3]

The House Conference Report, which explains the Act in its final form, describes § 12(2) in broad terms, and nowhere suggests that the provision is limited to public offerings:

> "The House bill (sec. 12) imposes civil liability for using the mails or the facilities of interstate commerce to sell securities (including securities exempt, under section 3, from other provisions of the bill) *by means of representations which are untrue or are misleading by reason of omissions of material facts.*" H. R. Conf. Rep. No. 152, 73d Cong., 1st Sess., 26–27 (1933) (emphasis added).

Nor does the Report mention the word "prospectus," even though one would expect that word to figure prominently if it were the significant limitation the Court describes. See also Rapp, The Proper Role of Securities Act Section 12(2) as an Aftermarket Remedy for Disclosure Violations, 47 Bus. Law. 711, 719–724 (1992) (offering detailed analysis of legislative history).[4]

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[3] Though the Court cites legislative history to show Congress' intent to follow, rather than depart from, the British statute, these sources suggest an intention to afford *at least as much* protection from fraud as the British statute provides. See *ante*, at 582–583 (quoting H. R. Rep. No. 85, 73d Cong., 1st Sess., 9 (1933)) ("What is deemed necessary for sound financing in conservative England ought not be unnecessary for the more feverish pace which American finance has developed."). Congress' provision for liability beyond "offering[s] to the public," however, suggests a legislative conclusion that the "feverish pace" of American finance called for greater protection from fraud than the British Act supplied.

[4] Though House Report No. 85 affords support for the reading advanced by the Court, it predates the Conference Report. Moreover, I do not share the Court's view that Report No. 85 speaks with clarity and specific-

Commentators writing shortly after passage of the Act understood § 12(2) to cover resales and private sales, as well as public offerings. Felix Frankfurter, organizer of the team that drafted the statute, firmly stated this view. See Frankfurter, The Federal Securities Act: II, 8 Fortune 53, 108 (1933) (Act "seeks to terminate the facilities of the mails and of interstate commerce for dishonest or unfair dealings in the sale of *all* private or foreign government securities, *new or old*") (emphasis added). William O. Douglas expressed the same understanding. See Douglas & Bates, The Federal Securities Act of 1933, 43 Yale L. J. 171, 183 (1933) (noting that, except for transactions involving securities exempt under § 3(a)(2), 15 U. S. C. § 77c(a)(2), no securities or transactions are exempt from § 12(2)).

Most subsequent commentators have agreed that § 12(2), like § 17(a), is not confined to public offerings. See, *e. g.*, H. Bloomenthal, Securities Law Handbook § 14.05, pp. 14–13, 14–38 (1991); 2 A. Bromberg & L. Lowenfels, Securities Fraud and Commodities Fraud § 5.2(600) (1993); 1 T. Hazen, Law of Securities Regulation § 7.5, p. 318 (2d ed. 1990); 17A J. Hicks, Civil Liabilities: Enforcement and Litigation under the 1933 Act § 6.01[3], pp. 6–12 to 6–39 (1994); 9 L. Loss & J. Seligman, Securities Regulation 4217–4222 (3d ed. 1992); Maynard, Section 12(2) of the Securities Act of 1933: A

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ity to the question at hand—§ 12(2)'s scope. See *ante*, at 581. In suggesting that registration statements and prospectuses are "the basic information by which the public is solicited," and that the Act's liability provisions penalize the "originators of securities," see H. R. Rep. No. 85, 73d Cong., 1st Sess., 1, 9 (1933), the Report does not focus on § 12(2), but on "[s]ections 11 and 12" in general. *Ibid.* The Report's broad address thus takes in § 11, 15 U. S. C. § 77k, which is directed at misstatements in registration statements, and § 12(1), 15 U. S. C. § 77*l*(1), which targets sales and offers to sell securities in violation of the Act's registration provisions. There is no dispute that the latter two provisions apply only to public offerings—or, to be precise, to transactions subject to registration. The dominant point made by the Report, moreover, is that the civil liability sections are exacting.

Remedy for Fraudulent Postdistribution Trading?, 20 Sec. Reg. L. J. 152 (1992); Rapp, *supra*, at 711; Comment, Applying Section 12(2) of the 1933 Securities Act to the Aftermarket, 57 U. Chi. L. Rev. 955 (1990). But see Weiss, The Courts Have It Right: Securities Act Section 12(2) Applies Only to Public Offerings, 48 Bus. Law. 1 (1992).

While Courts of Appeals have divided on § 12(2)'s application to secondary transactions,[5] every Court of Appeals to consider the issue has ruled that private placements are subject to § 12(2). See *Metromedia Co.* v. *Fugazy*, 983 F. 2d 350, 360–361 (CA2 1992), cert. denied, 508 U. S. 952 (1993); *Haralson* v. *E. F. Hutton Group, Inc.*, 919 F. 2d 1014, 1032 (CA5 1990); *Nor-Tex Agencies, Inc.* v. *Jones*, 482 F. 2d 1093, 1099 (CA5 1973); *Pacific Dunlop Holdings Inc.* v. *Allen & Co. Inc.*, 993 F. 2d 578, 587 (CA7 1993) (exemptions in § 4, 15 U. S. C. § 77d, do not limit § 12(2)'s reach); see also *Adalman* v. *Baker, Watts & Co.*, 807 F. 2d 359 (CA4 1986) (applying § 12(2) to private sale). "[L]ongstanding acceptance by the courts [of a judicial interpretation], coupled with Congress' failure to reject" that interpretation, "argues significantly in favor of accept[ing]" it. *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 733 (1975).

The drafters of the Uniform Securities Act, in 1956, modeled § 410(a)(2) of that Act[6] on § 12(2) of the federal Securi-

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[5] Compare *Pacific Dunlop Holdings Inc.* v. *Allen & Co. Inc.*, 993 F. 2d 578 (CA7 1993) (applying § 12(2) to secondary transactions), cert. granted, 510 U. S. 1083, cert. dism'd, 510 U. S. 1160 (1994), with *First Union Discount Brokerage Services, Inc.* v. *Milos*, 997 F. 2d 835, 842–844 (CA11 1993) (holding § 12(2) inapplicable to secondary transactions); *Ballay* v. *Legg Mason Wood Walker, Inc.*, 925 F. 2d 682 (CA3) (same), cert. denied, 502 U. S. 820 (1991).

[6] Section 410(a)(2) imposes liability on "[a]ny person who"

"(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he

ties Act. Notably, the Uniform Act drafters did not read § 12(2) as limited to public offerings. Accordingly, they did not so limit § 410(a)(2). Bloomenthal, *supra,* § 14.05, at 14–38 to 14–39; see also § 410(a)(2) comment, 7B U. L. A. 644 (1985) (describing as comparable scope of § 410(a)(2) and scope of Uniform Securities Act § 101, the Uniform Act's analog to Securities Act § 17(a)).[7] Section 410, it is true, does not contain the "prospectus or oral communication" language, perhaps because "prospectus" is not a defined term in the Uniform Securities Act. See § 401, 7B U. L. A. 578–581 (1985) (listing definitions). There is scant doubt, however, that the drafters of Uniform Act § 410(a)(2) intended the provision to have the same meaning as Securities Act § 12(2). See § 410(a)(2) comment, 7B U. L. A. 644 ("This clause is almost identical with § 12(2) of the Securities Act of 1933 . . . ."); L. Loss, Commentary on the Uniform Securities Act 147 (1976) ("The resemblance [of § 410(a)(2) of the Uniform Act] to § 12(2) of the Securities Act of 1933, 15 U. S. C. § 77*l*(2), will once more make for an interchangeability of federal and state judicial preceden[ts] in this very important area.").

* * *

In light of the text, drafting history, and longstanding scholarly and judicial understanding of § 12(2), I conclude that § 12(2) applies to a private resale of securities. If adjustment is in order, as the Court's opinion powerfully

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did not know, and in the exercise of reasonable care could not have known, of the untruth or omission . . . ." 7B U. L. A. 643 (1985).

[7] State adaptations of § 410(a)(2) have been applied consistently beyond public offerings; they have been read to cover secondary transactions, see, *e. g., Banton* v. *Hackney,* 557 So. 2d 807 (Ala. 1989); *Bradley* v. *Hullander,* 272 S. C. 6, 249 S. E. 2d 486 (1978); *S & F Supply Co.* v. *Hunter,* 527 P. 2d 217 (Utah 1974), as well as private transactions, see, *e. g., Towery* v. *Lucas,* 128 Ore. App. 555, 876 P. 2d 814 (1994); *Jenkins* v. *Jacobs,* 748 P. 2d 1318 (Colo. App. 1987); *Gaudina* v. *Haberman,* 644 P. 2d 159 (Wyo. 1982); *Foelker* v. *Kwake,* 279 Ore. 379, 568 P. 2d 1369 (1977).

suggests it is,[8] Congress is equipped to undertake the alteration. Accordingly, I dissent from the Court's opinion and judgment.

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[8] Section 12(2) did not become prominent in Securities Act litigation until this Court held in *Ernst & Ernst* v. *Hochfelder*, 425 U. S. 185 (1976), that an action for civil damages under § 10(b) of the Securities Exchange Act of 1934, 48 Stat. 891, 15 U. S. C. § 78j(b), and Securities and Exchange Commission Rule 10b–5, 17 CFR § 240.10b–5 (1975), requires proof of scienter. See Loss, The Assault on Securities Act Section 12(2), 105 Harv. L. Rev. 908, 910 (1992).

Though the Court of Appeals' reading of § 12(2) shows fidelity to the statute Congress passed, this Court's opinion makes noteworthy practical and policy points. As the Court observes, *ante*, at 578, under the Court of Appeals' reading, § 12(2) would equip buyers with a rescission remedy for a negligent misstatement or omission even if the slip did not cause the buyer's disenchantment with the investment. And, in light of the "free writing" provision of § 2(10)(a), 15 U. S. C. § 77b(10)(a) (a communication will not be deemed a "prospectus" if its recipient was previously sent a prospectus meeting the requirements of § 10), the Court of Appeals' reading, ironically, would leave a seller more vulnerable in private transactions than in public ones.

Reporter's Note

The next page is purposely numbered 801. The numbers between 604 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 3, 1994, THROUGH FEBRUARY 27, 1995

OCTOBER 3, 1994

Certiorari Granted—Vacated and Remanded

No. 93–1510. ALABAMA *v.* BROWN. Ct. Crim. App. Ala. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *United States*, 512 U. S. 452 (1994). Reported below: 630 So. 2d 481.

No. 93–1707. SCHMIDT ET AL. *v.* ESPY, SECRETARY OF AGRICULTURE. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed August 1, 1994. Reported below: 9 F. 3d 1352.

No. 93–1748. SOLOMON ET AL. *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS & LOAN ASSN., F. A.; and

No. 93–1757. PATTULLO ET AL. *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS & LOAN ASSN., F. A. C. A. 2d Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *O'Melveny & Myers* v. *FDIC*, 512 U. S. 79 (1994). Reported below: 18 F. 3d 111.

No. 93–1896. WOODS *v.* CANDELA. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Heck* v. *Humphrey*, 512 U. S. 477 (1994). Reported below: 13 F. 3d 574.

No. 93–1915. ALTIMUS ET AL. *v.* OREGON. Ct. App. Ore. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dolan* v. *City of Tigard*, 512 U. S. 374 (1994). Reported below: 124 Ore. App. 61, 862 P. 2d 109.

No. 93–1985. ARIZONA *v.* COOK. Ct. App. Ariz. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Dixon*, 509 U. S. 688 (1993). Reported below: 177 Ariz. 595, 870 P. 2d 413.

No. 94–45. LAWSON ET AL. *v.* MURRAY ET AL. Sup. Ct. N. J. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994). Reported below: 136 N. J. 32, 642 A. 2d 338.

Miscellaneous Orders

No. ——. MCGEE ET AL. *v.* LOS ANGELES COUNTY ET AL.;
No. ——. MESTER *v.* SAIKI ET AL.;
No. ——. NAUSS *v.* UNITED STATES;
No. ——. LEGEAR *v.* NIX;
No. ——. GODBOLDO *v.* BURT, WARDEN;
No. ——. LAUGHTER *v.* BELK-SIMPSON;
No. ——. BURNS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;
No. ——. GHAFARI *v.* GACEK ET AL.;
No. ——. GILL *v.* WILLIAMS;
No. ——. RANSOME *v.* BOWLING ET AL.;
No. ——. HERNANDEZ *v.* RILEY, SUPERINTENDENT OF FISHKILL CORRECTIONAL FACILITY;
No. ——. BOATRIGHT *v.* REICH, SECRETARY OF LABOR, ET AL.;
No. ——. VDA DE MENDOZA ET AL. *v.* UNITED STATES; and
No. ——. SRINIVASAN *v.* EL MONTE HIGH SCHOOL DISTRICT. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. ——. FULLER *v.* NORFOLK SOUTHERN CORP. Motion of petitioner for reconsideration of order denying leave to file petition for writ of certiorari out of time [511 U. S. 1015] denied.

No. ——. JEMZURA *v.* BULSIEWICZ ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time and for other relief denied.

No. ——. CAZES *v.* TENNESSEE. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. ——. RODRIGUEZ *v.* NEW MEXICO. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. — – —. DOE *v.* UNITED STATES. Motion of petitioner for leave to file a redacted petition for writ of certiorari denied.

No. D–926. IN RE DISBARMENT OF MCBRIDE. Disbarment entered. [For earlier order herein, see 497 U. S. 1055.]

No. D–1362. IN RE DISBARMENT OF SNEED. Disbarment entered. [For earlier order herein, see 510 U. S. 1105.]

No. D–1391. IN RE DISBARMENT OF CASTRO. Further consideration of response to the rule to show cause deferred. [For earlier order herein, see 511 U. S. 1104.]

No. D–1408. IN RE DISBARMENT OF LESLIE. Disbarment entered. [For earlier order herein, see 512 U. S. 1202.]

No. D–1413. IN RE DISBARMENT OF KILPATRICK. Disbarment entered. [For earlier order herein, see 512 U. S. 1232.]

No. D–1460. IN RE DISBARMENT OF FRIEDMAN. It is ordered that Theodore H. Friedman, of New York, N. Y., be suspended from the practice of law in this Court and that a rule 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. 8, Orig. ARIZONA *v.* CALIFORNIA ET AL. Motion of West Bank Homeowners Association for leave to intervene referred to the Special Master. [For earlier order herein, see, *e. g.*, 510 U. S. 987.]

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for award of compensation and fees granted, and the River Master is awarded a total of $5,403.75 for the period April 1 through June 30, 1994, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 512 U. S. 1202.]

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for interim fees and expenses granted, and the Special Master is awarded $92,240.78 to be paid as follows: 40% by Kansas, 40% by Colorado, and 20% by the United States. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Reply briefs, if any, may be filed by the parties within 30 days. [For earlier order herein, see, *e. g.*, 510 U. S. 1174.]

No. 111, Orig. TEXAS ET AL. *v.* NEW YORK. Motion of Massachusetts to dismiss its amended complaint without prejudice denied. Amended complaint of Massachusetts dismissed. [For earlier order herein, see, *e. g.*, 512 U. S. 1202.]

No. 121, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. Motion of the Houston defendants for leave to file a supplemental answer granted. [For earlier order herein, see, *e. g.*, 510 U. S. 1174.]

No. 92–519. JOHNSON, SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES, ET AL. *v.* DE GRANDY ET AL., 512 U. S. 997. Motion of appellants Bolley Johnson et al. to retax costs granted.

No. 92–1450. WATERS ET AL. *v.* CHURCHILL ET AL., 511 U. S. 661. Motion of respondents to retax costs denied.

No. 93–723. UNITED STATES *v.* X-CITEMENT VIDEO, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 510 U. S. 1163.] Motion of National Law Center for Children and Families et al. for leave to participate in oral argument as *amici curiae* and for additional time for oral argument denied.

No. 93–1633. SWAN ET AL. *v.* PETERSON, WARDEN, ET AL. C. A. 9th Cir. Motion of Charles R. Nesson for leave to file a brief as *amicus curiae* granted.

No. 93–1857. CARPENTERS DISTRICT COUNCIL OF NEW ORLEANS AND VICINITY ET AL. *v.* DILLARD DEPARTMENT STORES, INC., ET AL. C. A. 5th Cir.;

No. 93–2068. KIMBERLIN *v.* QUINLAN ET AL. C. A. D. C. Cir.;

No. 94–12. SEMINOLE TRIBE OF FLORIDA *v.* FLORIDA ET AL. C. A. 11th Cir.;

No. 94–35. ALABAMA ET AL. *v.* POARCH BAND OF CREEK INDIANS ET AL. C. A. 11th Cir.;

No. 94–189. POARCH BAND OF CREEK INDIANS *v.* ALABAMA ET AL. C. A. 11th Cir.; and

No. 94–219. FLORIDA ET AL. *v.* SEMINOLE TRIBE OF FLORIDA. C. A. 11th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 93–1882. SWANSON ET AL. *v.* NORTH CAROLINA ET AL. Sup. Ct. N. C. Motion of National Association of Retired Federal Employees et al. for leave to file a brief as *amici curiae* granted.

No. 93–1911. SANDIN, UNIT TEAM MANAGER, HALAWA CORRECTIONAL FACILITY *v.* CONNER ET AL. C. A. 9th Cir. Motion

of respondent DeMont R. D. Conner for leave to proceed *in forma pauperis* granted.

No. 93–8730. GILES *v.* ALABAMA, 512 U. S. 1213. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 93–9122. RODENBAUGH *v.* OTT (two cases). C. A. 3d Cir.; and

No. 94–5059. JONES *v.* SCHULZE, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF FAMILY SERVICES, ET AL. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until October 24, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–9758. FERRAN ET AL. *v.* TOWN OF NASSAU, NEW YORK, ET AL. C. A. 2d Cir.;

No. 94–5291. BAASCH *v.* REYER ET AL. C. A. 2d Cir.; and

No. 94–5769. BAILEY *v.* BAILEY. Ct. Sp. App. Md. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 24, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–3. REYNOLDSVILLE CASKET CO. ET AL. *v.* HYDE. Sup. Ct. Ohio. Motion of Dalkon Shield Claimants Trust for leave to file a brief as *amicus curiae* granted.

No. 94–197. ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* GREEN ET AL. C. A. 9th Cir. Motions of United States Justice Foundation and Washington Legal Foundation for leave to file briefs as *amici curiae* granted.

No. 93–9439. IN RE ZOLICOFFER;
No. 93–9670. IN RE VARGAS;
No. 93–9738. IN RE SEAGRAVE;
No. 94–5261. IN RE HUTCHINGS VON LUDWITZ;
No. 94–5336. IN RE CRUMB;
No. 94–5545. IN RE MARTINEZ;
No. 94–5581. IN RE HARRELL;
No. 94–5608. IN RE GOSSAGE ET AL.;
No. 94–5685. IN RE JONES; and

No. 94–5885. IN RE TUCKER. Petitions for writs of habeas corpus denied.

No. 93–9051. IN RE REEDER;
No. 93–9070. IN RE SHOWS;
No. 93–9077. IN RE GREEN;
No. 93–9202. IN RE GOSCH;
No. 93–9216. IN RE DREW;
No. 93–9481. IN RE REDDECK;
No. 93–9482. IN RE WHITE;
No. 93–9568. IN RE GUNDERSON;
No. 93–9585. IN RE WHITE;
No. 93–9784. IN RE CRAWFORD;
No. 94–299. IN RE MORRISON;
No. 94–5178. IN RE BERRY;
No. 94–5194. IN RE DE CASTRO;
No. 94–5255. IN RE LITTRELL;
No. 94–5256. IN RE MONTGOMERY;
No. 94–5318. IN RE ZZIE;
No. 94–5381. IN RE COOPER; and
No. 94–5382. IN RE COOPER. Petitions for writs of mandamus denied.

No. 93–1969. IN RE CITY OF HENDERSON ET AL. Motion of petitioner for show cause order denied. Petition for writ of mandamus denied.

No. 94–146. IN RE JOHNSON; and
No. 94–5097. IN RE KAMAL. Petitions for writs of mandamus and/or prohibition denied.

No. 93–9352. IN RE SHAWLEY; and
No. 93–9614. IN RE WRIGHT. Petitions for writs of prohibition denied.

Certiorari Denied

No. 93–248. JOHNSON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 126.

No. 93–1441. WALSH *v.* DELAWARE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 50.

No. 93–1479. CRUTTENDEN & CO. ET AL. *v.* LYNCH ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 18 Cal. App. 4th 802, 22 Cal. Rptr. 2d 636.

No. 93–1483. HARRISON ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION; and

No. 93–1485. FEDERAL DEPOSIT INSURANCE CORPORATION *v.* COCKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 396.

No. 93–1484. PETERS *v.* POLK COUNTY MEMORIAL HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 229.

No. 93–1547. IN RE SMITH. C. A. 10th Cir. Certiorari denied. Reported below: 10 F. 3d 723.

No. 93–1550. CORWIN, REGISTRAR OF VOTERS FOR THE CITY AND COUNTY OF SAN FRANCISCO, ET AL. *v.* MARK ET AL.; and

No. 93–1846. MARK ET AL. *v.* CORWIN, REGISTRAR OF VOTERS FOR THE CITY AND COUNTY OF SAN FRANCISCO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 989.

No. 93–1603. CITY OF CLEARWATER, FLORIDA, ET AL. *v.* CHURCH OF SCIENTOLOGY FLAG SERVICE ORGANIZATION, INC.; and

No. 93–1604. CITY OF CLEARWATER, FLORIDA, ET AL. *v.* CHURCH OF SCIENTOLOGY FLAG SERVICE ORGANIZATION, INC. C. A. 11th Cir. Certiorari denied. Reported below: No. 93–1603, 2 F. 3d 1509; No. 93–1604, 2 F. 3d 1514.

No. 93–1630. RESTIVO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 274.

No. 93–1632. ENG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 165.

No. 93–1644. BURCHARD ET UX. *v.* DALTON, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1105.

No. 93–1651. PATRICK *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 66.

No. 93–1662. MOBILE FREEZERS, INC. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 57.

No. 93–1670. ANDERSON *v.* ELECTRONIC DATA SYSTEMS CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 11 F. 3d 1311.

No. 93–1672. PAHDOPONY *v.* DEPARTMENT OF THE INTERIOR. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 93–1678. WARDA *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 15 F. 3d 533.

No. 93–1679. BRITENBACH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 830 and 1092.

No. 93–1684. HIRANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 597.

No. 93–1686. NELLIS ET AL. *v.* AIR LINE PILOTS ASSOCIATION INTERNATIONAL. C. A. 4th Cir. Certiorari denied. Reported below: 15 F. 3d 50.

No. 93–1690. SCOTT *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 93–1696. SMITH *v.* RUNYON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1089.

No. 93–1700. SNOW ET AL. *v.* HARNISCHFEGER CORP. C. A. 1st Cir. Certiorari denied. Reported below: 12 F. 3d 1154.

No. 93–1703. MAINLANDS SECTION 1 AND 2 CIVIC ASSN., INC. *v.* MASSARO ET UX., INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF MASSARO, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 1472.

No. 93–1711. ROUSH *v.* KFC NATIONAL MANAGEMENT CO. C. A. 6th Cir. Certiorari denied. Reported below: 10 F. 3d 392.

No. 93–1729. NYHUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 8 F. 3d 731.

No. 93–1734. STEPHENS *v.* MILLER, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 13 F. 3d 998.

No. 93–1735. SMITH ET UX. *v.* JEFFERSON PILOT LIFE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 562.

No. 93–1736. PUGH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 157 Ill. 2d 1, 623 N. E. 2d 255.

No. 93–1743. HOSKINS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 361.

No. 93–1765. COLE *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 19 F. 3d 39.

No. 93–1767. ATONIO ET AL. *v.* WARDS COVE PACKING CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 F. 3d 1485.

No. 93–1768. H. R. *v.* E. O. ET AL. Ct. App. D. C. Certiorari denied. Reported below: 630 A. 2d 670.

No. 93–1776. HALL ET AL. *v.* GREEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 695.

No. 93–1779. CALVO *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 630 So. 2d 548.

No. 93–1784. PATTERSON ET AL. *v.* NEWSPAPER & MAIL DELIVERERS UNION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 13 F. 3d 33.

No. 93–1787. FIDELITY & DEPOSIT COMPANY OF MARYLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 10 F. 3d 1150.

No. 93–1790. BELSITO *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 93–1793. COMMERCIAL LIFE INSURANCE CO. *v.* TOLLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 602.

No. 93–1794. UNION TANK CAR CO. *v.* VARIOUS PLAINTIFFS IN CLASS. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio St. 3d 255, 626 N. E. 2d 85.

No. 93–1795. STEINFELD *v.* HODDICK, GUARDIAN OF THE ESTATE OF STEINFELD. Sup. Ct. Ill. Certiorari denied. Reported below: 158 Ill. 2d 1, 630 N. E. 2d 801.

No. 93–1796. HOLMBERG ET AL. *v.* CITY OF RAMSEY. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 140.

No. 93–1802. GUPTON *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 203.

No. 93–1803. MOORE ET AL. *v.* KENNISON. C. A. 8th Cir. Certiorari denied.

No. 93–1806. MEN-GUER CHRYSLER PLYMOUTH, INC. *v.* CHRYSLER CORP. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1220.

No. 93–1809. DANCE ET AL. *v.* AVIEL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1111.

No. 93–1811. MARENO *v.* COUNTY OF WESTCHESTER. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 390.

No. 93–1817. MOCK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 16 F. 3d 1324.

No. 93–1820. SEJPAL ET AL. *v.* CORSON, MITCHELL, TOMHAVE & MCKINLEY, M. D. S., INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 428 Pa. Super. 648, 627 A. 2d 210.

No. 93–1821. MYERS, WARDEN, ET AL. *v.* JIMINEZ. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1474.

No. 93–1825. BLACK HILLS INSTITUTE OF GEOLOGICAL RESEARCH ET AL. *v.* DEPARTMENT OF JUSTICE. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 737.

No. 93–1827. LOKAY *v.* AMERICAN REAL ESTATE CORP. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 93–1829. KIRSH *v.* SCOTT, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1425.

No. 93–1830. SPENCER *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 17 F. 3d 368.

No. 93–1831. ADAMS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 444 Mich. 903, 512 N. W. 2d 316.

No. 93–1832. LANGLEY *v.* JACKSON STATE UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 1070.

No. 93–1835. 1605 BOOK CENTER, INC. *v.* TAX APPEALS TRIBUNAL OF NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 83 N. Y. 2d 240, 631 N. E. 2d 86.

No. 93–1836. PEELER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 181.

No. 93–1839. ATLANTIC STATES LEGAL FOUNDATION, INC. *v.* EASTMAN KODAK CO. C. A. 2d Cir. Certiorari denied. Reported below: 12 F. 3d 353.

No. 93–1840. HUDSON *v.* VARNEY ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 82 N. Y. 2d 888, 632 N. E. 2d 463.

No. 93–1842. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1215.

No. 93–1843. LANDERS SEED CO., INC., ET AL. *v.* CHAMPAIGN NATIONAL BANK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 15 F. 3d 729.

No. 93–1845. PETERS *v.* DELAWARE RIVER PORT AUTHORITY OF PENNSYLVANIA AND NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 16 F. 3d 1346.

No. 93–1847. CHING LUEN ENTERPRISES CO. *v.* MASON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 535.

No. 93–1848. DANESHVAR *v.* UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 93–1849. HUNKINS, INDIVIDUALLY AND DBA MUSE TEN CENTER, ET AL. *v.* CITY OF MINNEAPOLIS ET AL. Ct. App. Minn. Certiorari denied. Reported below: 508 N. W. 2d 542.

No. 93–1850. CHOPP COMPUTER CORP., INC. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 1344.

No. 93–1851. DURR ET AL. *v.* INTERCOUNTY TITLE COMPANY OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 14 F. 3d 1183.

No. 93–1852. OWENS ET AL. *v.* HEWELL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 410.

No. 93–1854. KABEALO *v.* HUNTINGTON NATIONAL BANK. C. A. 6th Cir. Certiorari denied. Reported below: 17 F. 3d 822.

No. 93–1855. KORMAN, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 10 F. 3d 931.

No. 93–1860. AUSTEX, LTD. *v.* TEXAS ET AL.; MUNDAY ENTERPRISES *v.* TEXAS ET AL.; EDWARDS, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF EDWARDS, ET AL. *v.* TEXAS ET AL.; ALLEN ET AL. *v.* TEXAS ET AL.; and CENTENNIAL MORTGAGE CORP. *v.* TEXAS ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 867 S. W. 2d 769 (first case); 868 S. W. 2d 319 (second case); 868 S. W. 2d 321 (third case); 870 S. W. 2d 1 (fourth case); 867 S. W. 2d 783 (fifth case).

No. 93–1863. MARKOFF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 13 F. 3d 641.

No. 93–1865. JENKINS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 627 N. E. 2d 789.

No. 93–1866. REDNER *v.* HENDERSON, SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–1867. MARTIN COUNTY, FLORIDA *v.* WOUTERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 924.

No. 93–1869. JENNINGS WATER, INC. *v.* CSL UTILITIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 130.

No. 93–1872. CAMACHO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1083.

No. 93–1873. LONG *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 206.

No. 93–1874. RUSSO ET AL. *v.* CASEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1089.

No. 93–1876. LUONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 645.

No. 93–1877. STOCK *v.* UNIVERSAL FOODS CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 411.

No. 93–1879. ERNDT ET AL. *v.* PRE-VEST, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–1880. CITY OF CASTLE ROCK ET AL. *v.* HUSON. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1551.

No. 93–1881. RUARK ET AL. *v.* BOATWRIGHT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 213.

No. 93–1884. JENKIN *v.* ELECTRO-TEC CORP. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 410.

No. 93–1885. SESSIONS TANK LINERS, INC. *v.* JOOR MANUFACTURING, INC. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 295.

No. 93–1886. T. I. CONSTRUCTION CO., INC. *v.* KIEWIT EASTERN CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 123.

No. 93–1887. MASINI SOLER *v.* SOLICITOR GENERAL OF PUERTO RICO ET AL. Sup. Ct. P. R. Certiorari denied.

No. 93–1889. AMERICAN EXPRESS BANK LTD. *v.* SHEERBONNET LTD. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 46.

No. 93–1890. CEMEX, S. A. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 13 F. 3d 398.

No. 93–1892. FIORE, DBA MUNICIPAL & INDUSTRIAL DISPOSAL CO. *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 16 F. 3d 404.

No. 93–1893. STROUD *v.* SHAW, ADMINISTRATRIX OF THE ESTATE OF BOWEN, DECEASED, ET AL.; and

No. 94–9. SHAW, ADMINISTRATRIX OF THE ESTATE OF BOWEN, DECEASED, ET AL. *v.* STROUD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 13 F. 3d 791.

No. 93–1894. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 1103.

No. 93–1897. BERGER *v.* CITY OF CLEVELAND. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 91 Ohio App. 3d 102, 631 N. E. 2d 1085.

No. 93–1899. PEREZ ET AL. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–1900. HARPER *v.* HARMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 F. 3d 1455.

No. 93–1902. PUERTO RICO PORT AUTHORITY *v.* BROTHERHOOD OF OFFICE & COMMERCIAL WORKERS ET AL. Super. Ct. P. R. Certiorari denied.

No. 93–1903. ROSS ET AL. *v.* BUCKEYE CELLULOSE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 980 F. 2d 648.

No. 93–1908. SENANAYAKE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 93–1909. RODRIGUEZ ET AL. *v.* SECRETARY OF THE TREASURY OF PUERTO RICO ET AL. Sup. Ct. P. R. Certiorari denied.

No. 93–1910. BREEDLOVE *v.* PHILLIPS ET AL. Sup. Ct. Va. Certiorari denied.

No. 93–1913. SANTOSUOSSO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1435.

No. 93–1914. WILLIAMS ET AL. *v.* BURNHAM BROADCASTING CO., DBA WVUE–TV 8. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 629 So. 2d 1335.

No. 93–1916. ROSA ET AL. *v.* WARNER ELECTRICAL CONTRACTING ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 870 P. 2d 1210.

No. 93–1917. SHONG-CHING TONG *v.* ASSURED THRIFT & LOAN ASSN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–1918. LANKFORD *v.* DOE. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 443.

No. 93–1921. ALEOTTI *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93–1922. MARYLAND *v.* SIMMONS. Ct. App. Md. Certiorari denied. Reported below: 333 Md. 547, 636 A. 2d 463.

No. 93–1923. AYUDA, INC., ET AL. *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 7 F. 3d 246.

No. 93–1924. MITCHELL *v.* ALLSTATE LIFE INSURANCE CO., NORTHBROOK, ILLINOIS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 937.

No. 93–1925. MUSEMECHE *v.* CHARTER NATIONAL BANK-WESTHEIMER. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 1079.

No. 93–1926. NATIONAL RIFLE ASSOCIATION OF AMERICA *v.* HANDGUN CONTROL FEDERATION OF OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 15 F. 3d 559.

No. 93–1927. OMNITECH INTERNATIONAL, INC. *v.* CLOROX CO. C. A. 5th Cir. Certiorari denied. Reported below: 11 F. 3d 1316.

No. 93–1928. MORETTI *v.* ZISA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 643.

No. 93–1929. VENEZIA *v.* ROBINSON. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 209.

No. 93–1930. BOUTTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 13 F. 3d 855.

No. 93–1931. FOWLER *v.* VANMETER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 59.

No. 93–1932. ETIM ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 18 F. 3d 73.

No. 93–1933. MARTINEZ-MONCIVAIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 1030.

No. 93–1934. SNEED *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 191 App. Div. 2d 118, 600 N. Y. S. 2d 453.

No. 93–1936. CEMENT KILN RECYCLING COALITION ET AL. *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 16 F. 3d 1246.

No. 93–1938. HAMMOND *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1219.

No. 93–1939. LIONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1093.

No. 93–1941. NISQUALLY INDIAN TRIBE *v.* CULLEN & CULLEN. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 28.

No. 93–1942. FEMLING ET AL. *v.* FARNWORTH. Sup. Ct. Idaho. Certiorari denied. Reported below: 125 Idaho 283, 869 P. 2d 1378.

No. 93–1943. SHEPPARD *v.* BEERMAN, INDIVIDUALLY AND AS JUSTICE OF THE SUPREME COURT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 18 F. 3d 147.

No. 93–1944. ASSAR *v.* CRESCENT COUNTIES FOUNDATION FOR MEDICAL CARE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 13 F. 3d 215.

No. 93–1945. EAST DAYTON TOOL & DIE CO. ET AL. *v.* PENSION BENEFIT GUARANTY CORPORATION. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 1122.

No. 93–1946. GOODEN *v.* NEAL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 17 F. 3d 925.

No. 93–1947. BARNETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 10 F. 3d 1553.

No. 93–1948. CROMLEY *v.* BOARD OF EDUCATION OF LOCKPORT TOWNSHIP HIGH SCHOOL DISTRICT 205 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 17 F. 3d 1059.

No. 93–1949. MED-THERAPY REHABILITATION SERVICES, INC., ET AL. *v.* DIVERSICARE CORPORATION OF AMERICA. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 410.

No. 93–1950. DONOVAN ET VIR, PARENTS OF DONOVAN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 17 F. 3d 1442.

No. 93–1951. DYKSTRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 397.

No. 93–1952. ALLEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 20 Cal. App. 4th 846, 25 Cal. Rptr. 2d 26.

No. 93–1953. ANNAPOLIS ROAD, LTD. *v.* ANNE ARUNDEL COUNTY, MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 98 Md. App. 733.

No. 93–1954. LINGENFELTER *v.* DOMANICO ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 536 Pa. 549, 640 A. 2d 415.

No. 93–1956. DR. K ET AL. *v.* STATE BOARD OF PHYSICIAN QUALITY ASSURANCE. Ct. Sp. App. Md. Certiorari denied. Reported below: 98 Md. App. 103, 632 A. 2d 453.

No. 93–1957. DILLON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1227.

No. 93–1959. KROUSE *v.* NATIONAL RAILROAD PASSENGER CORPORATION. Ct. App. D. C. Certiorari denied. Reported below: 627 A. 2d 489.

No. 93–1961. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 426.

No. 93–1962. WEBER *v.* SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–1963. HOROWITZ *v.* STATE BAR OF TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 93–1964. AMERICAN BONDING CO. *v.* TRUSTEES OF THE CARPENTERS FOR SOUTHERN NEVADA HEALTH AND WELFARE

TRUST ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 110 Nev. 1530, 893 P. 2d 392.

No. 93–1965. EDENFIELD ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 197.

No. 93–1966. GUNAWANSA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 422.

No. 93–1967. JACKSON *v.* MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1426.

No. 93–1968. ROTUOTSOA *v.* CITY OF MUKILTEO. Sup. Ct. Wash. Certiorari denied.

No. 93–1970. MARTIN *v.* BUSEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 416.

No. 93–1972. LOPEZ *v.* BEHLES, TRUSTEE; and LOPEZ *v.* BEHLES, TRUSTEE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 14 F. 3d 1497 (first case); 25 F. 3d 1055 (second case).

No. 93–1973. ECKARD *v.* ECKARD. Ct. App. Md. Certiorari denied. Reported below: 333 Md. 531, 636 A. 2d 455.

No. 93–1974. TRACY, TAX COMMISSIONER OF OHIO *v.* MCI TELECOMMUNICATIONS CORP. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio St. 3d 195, 625 N. E. 2d 597.

No. 93–1976. HANEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 1367.

No. 93–1977. WILLIAMS ET VIR *v.* RICHMOND COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 93–1978. LIBERTY LAKE INVESTMENTS, INC. *v.* MAGNUSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 155.

No. 93–1979. BRADER *v.* LANDIS MANUFACTURING SYSTEMS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 300.

No. 93–1980. STANTON ET AL. *v.* BAYLINER MARINE CORP. Sup. Ct. Wash. Certiorari denied. Reported below: 123 Wash. 2d 64, 866 P. 2d 15.

No. 93–1981. RESULTS, INC. *v.* LAVALCO, INC. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 14.

No. 93–1982. AVILES *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 419 Pa. Super. 345, 615 A. 2d 398.

No. 93–1983. PARRISH *v.* RIVERVIEW NURSING HOME, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 93–1986. MURPHY EXPLORATION & PRODUCTION CO. *v.* DAVIS. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1237.

No. 93–1988. RABIN *v.* UNITED STATES INTELLIGENCE ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–1989. BENIGNI *v.* MAAS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 1102.

No. 93–1990. TRANSPAC DRILLING VENTURE, 1983–63 BY CRESTWOOD HOSPITALS, INC., ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 16 F. 3d 383.

No. 93–1991. ANDERSON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 431.

No. 93–1992. MARTIN-MUSUMECI *v.* LAW OFFICES OF HERBERT HAFIF PENSION AND PROFIT SHARING PLAN. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 28.

No. 93–1994. HAY'S WESTERN WEAR, INC. *v.* LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 624 So. 2d 975.

No. 93–1996. DURHAM *v.* XEROX CORP. C. A. 10th Cir. Certiorari denied. Reported below: 18 F. 3d 836.

No. 93–1997. GOLDEN VALLEY LUTHERAN COLLEGE ET AL. *v.* CITY OF GOLDEN VALLEY. Ct. App. Minn. Certiorari denied.

No. 93–1998. STAPLETON ET AL. *v.* COWLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 180.

No. 93–1999. PACIFIC GAS & ELECTRIC CO. *v.* SAVAGE. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 434, 26 Cal. Rptr. 2d 305.

No. 93–2000. PATZ ET AL. *v.* HOLLIDAYSBURG TRUST CO. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1430.

No. 93–2001. GRANOFF *v.* UNITED STATES; and
No. 93–9135. WARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 17 F. 3d 409.

No. 93–2002. BANKS, T/A JOB PROTECTORS FORMER ADMINISTRATIVE LAW JUDGES *v.* DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS. Ct. App. D. C. Certiorari denied. Reported below: 634 A. 2d 433.

No. 93–2003. LEGARDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 17 F. 3d 496.

No. 93–2004. FRIEDMAN *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 196 App. Div. 2d 280, 609 N. Y. S. 2d 578.

No. 93–2005. PLAKAS, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF PLAKAS, DECEASED *v.* DRINSKI ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 1143.

No. 93–2007. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY *v.* MAYO. C. A. 2d Cir. Certiorari denied. Reported below: 13 F. 3d 528.

No. 93–2008. SHAY ET AL. *v.* MAHLER ET AL. Cir. Ct. Berkeley County, W. Va. Certiorari denied.

No. 93–2009. LEADERSHIP SOFTWARE, INC. *v.* KEPNER-TREGOE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 527.

No. 93–2010. MELKONIAN *v.* MELKONIAN. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 626 So. 2d 285.

No. 93–2011. MATTHEWS *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 121.

No. 93–2012. CARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 F. 3d 738.

No. 93–2015. DEMPSEY ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 832.

No. 93–2016. ITHACA INDUSTRIES, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 17 F. 3d 684.

No. 93–2017. CHRISTIANO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 228 Conn. 456, 637 A. 2d 382.

No. 93–2019. MORSE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 259, 25 Cal. Rptr. 2d 816.

No. 93–2020. PERKINS *v.* WESTERN SURETY CO. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 935.

No. 93–2022. SUNDSTRAND CORP. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 17 F. 3d 965.

No. 93–2023. WOODWARD *v.* LORTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–2024. FREEDOM REPUBLICANS, INC., ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 13 F. 3d 412.

No. 93–2025. SPALETTA *v.* COUNTY OF MENDOCINO EMPLOYEES RETIREMENT ASSN. ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–2026. LEWIS *v.* NEW YORK CITY HEALTH & HOSPITALS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 391.

No. 93–2027. LINN ET UX. *v.* PITTS ET UX. Ct. App. Ore. Certiorari denied. Reported below: 123 Ore. App. 277, 858 P. 2d 1352.

No. 93–2028. STUART *v.* CITY OF RANCHO PALOS VERDES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–2029. General Truck Drivers, Warehousemen & Helpers Local Union Number 5 *v.* Formosa Plastics Corp. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 1079.

No. 93–2031. Tom Mistick & Sons, Inc. *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 536 Pa. 10, 637 A. 2d 607.

No. 93–2032. Kinter et al. *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 301.

No. 93–2033. Indiana Lumbermens Mutual Insurance Co. *v.* City of Baton Rouge. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 633 So. 2d 715.

No. 93–2034. Short *v.* Edison Chouest Offshore, Inc., et al. Sup. Ct. Ala. Certiorari denied. Reported below: 638 So. 2d 790.

No. 93–2035. Nintendo of America, Inc. *v.* Lewis Galoob Toys, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 16 F. 3d 1032.

No. 93–2036. CSR Ltd. *v.* MacQueen, Judge, Circuit Court of West Virginia, Kanawha County, et al. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 190 W. Va. 695, 441 S. E. 2d 658.

No. 93–2037. Alfredo A. *v.* Superior Court of California, County of Los Angeles (California, Real Party in Interest). Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 1212, 865 P. 2d 56.

No. 93–2038. Herrmann *v.* IUE AFL–CIO Pension Fund et al. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1049.

No. 93–2039. White *v.* Union Pacific Railroad Co. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 871 S. W. 2d 50.

No. 93–2040. Schenley Press, Inc. *v.* Maryland Comptroller of the Treasury. Ct. Sp. App. Md. Certiorari denied. Reported below: 98 Md. App. 745.

No. 93–2041. CARNEY *v.* DEPARTMENT OF JUSTICE. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 807.

No. 93–2043. MCDONOUGH *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 643.

No. 93–2044. SHAW *v.* MASTERS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 93–2045. JAMES CITY COUNTY, VIRGINIA *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 12 F. 3d 1330.

No. 93–2046. PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE CO. *v.* SHORES, PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHNSON. Ct. App. S. C. Certiorari denied. Reported below: 315 S. C. 347, 433 S. E. 2d 913.

No. 93–2047. GUTHRIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 397.

No. 93–2048. HENDERSON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 12 F. 3d 204.

No. 93–2049. WRENN *v.* VANDERBILT UNIVERSITY HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1224.

No. 93–2050. SOCIETE D'ANALYSES ET D'ETUDES BRETONNEAU *v.* RESOLUTION TRUST CORPORATION, AS CONSERVATOR FOR LINCOLN SAVINGS & LOAN, F. A. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1441.

No. 93–2051. ANDERSON *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 18.

No. 93–2054. BLACKBURN *v.* TUDOR. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio St. 3d 1452, 626 N. E. 2d 692.

No. 93–2055. SATELLITE BROADCASTING & COMMUNICATIONS ASSOCIATION OF AMERICA ET AL. *v.* RINGER, ACTING REGISTRAR OF COPYRIGHTS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 344.

No. 93–2056. REICHSTEIN *v.* NALICO INTERNATIONAL CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1541.

No. 93–2057. ELSHINNAWY *v.* DALTON, SECRETARY OF THE NAVY. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 642.

No. 93–2058. W. R. GRACE & CO. ET AL. *v.* MDU RESOURCES GROUP, DBA MONTANA DAKOTA UTILITIES CO. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 1274.

No. 93–2059. WES OUTDOOR ADVERTISING CO. *v.* NEW JERSEY DEPARTMENT OF TRANSPORTATION. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–2060. PHILIPS *v.* VON HOLDT ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 22 F. 3d 1105.

No. 93–2061. GREEN, EXECUTOR OF THE ESTATE OF IRVING, DECEASED *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 318.

No. 93–2062. DYNA CORP. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 397.

No. 93–2063. MAURI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 35.

No. 93–2064. TORGERSON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 179.

No. 93–2065. MAINE *v.* GRAVES. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 638 A. 2d 734.

No. 93–2066. BATTAGLIA *v.* COUNTY OF SCHENECTADY, NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1092.

No. 93–2071. PINELLAS COUNTY, FLORIDA *v.* CH2M HILL SOUTHEAST, INC. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 638 So. 2d 68.

No. 93–2072. BILTMORE SQUARE ASSOCIATES ET AL. *v.* CITY OF ASHEVILLE. Ct. App. N. C. Certiorari denied. Reported below: 113 N. C. App. 459, 439 S. E. 2d 211.

No. 93–2074. OJAI UNIFIED SCHOOL DISTRICT ET AL. *v.* JACKSON, A MINOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 F. 3d 1467.

No. 93–2075. FERRO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 1, 25 Cal. Rptr. 2d 747.

No. 93–2076. BABY K, THROUGH HER GUARDIAN AD LITEM, MR. K, ET AL. *v.* MS. H. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 590.

No. 93–2077. HANSEN *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 93–2078. TRIMIEW ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 93–2079. AURITI *v.* SEGAL ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–2080. HENDERSON ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY, THROUGH STONE, SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 93–2081. REIMANN ET AL. *v.* HUDDLESTON, TENNESSEE COMMISSIONER OF REVENUE. Ct. App. Tenn. Certiorari denied. Reported below: 883 S. W. 2d 135.

No. 93–2082. ASSOCIATION OF CHRISTIAN ACADEMIES AND COLLEGES OF PUERTO RICO ET AL. *v.* PUERTO RICO DEPARTMENT OF EDUCATION ET AL. Sup. Ct. P. R. Certiorari denied.

No. 93–2083. CAMPBELL *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 93–2084. BENJAMIN *v.* ADAM ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 426 Pa. Super. 543, 627 A. 2d 1186.

No. 93–2085. EVANS *v.* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 958, 26 Cal. Rptr. 2d 460.

No. 93–2086. BRANDT-ERICHSEN *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 1376.

No. 93–2087. IN RE BANKS, T/A JOB PROTECTORS FORMER ADMINISTRATIVE LAW JUDGES. C. A. D. C. Cir. Certiorari denied.

No. 93–2088. IN RE BANKS, T/A JOB PROTECTORS FORMER ADMINISTRATIVE LAW JUDGES. C. A. D. C. Cir. Certiorari denied.

No. 93–2089. SCHWENKE *v.* UTAH STATE BAR. Sup. Ct. Utah. Certiorari denied. Reported below: 865 P. 2d 1350.

No. 93–2090. ASAM *v.* HARWOOD. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 93–2091. FLEMING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 1325.

No. 93–2093. HIGH COUNTRY BROADCASTING CO., INC., ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 3 F. 3d 1244.

No. 93–2094. IN RE GARRINGER. Sup. Ct. Ind. Certiorari denied. Reported below: 626 N. E. 2d 809.

No. 93–2095. PANAMA CITY MEDICAL DIAGNOSTICS, LTD. *v.* STUART, IN HIS OFFICIAL CAPACITY AS SECRETARY OF FLORIDA DEPARTMENT OF PROFESSIONAL REGULATION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 1541.

No. 93–2100. HUMPHRIES *v.* RUNYON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1427.

No. 93–7741. JOHNS *v.* ILLINOIS;
No. 93–7766. LEVIN *v.* ILLINOIS;
No. 93–8068. CARTER *v.* ILLINOIS; and
No. 93–8076. KNOOP *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 157 Ill. 2d 138, 623 N. E. 2d 317.

No. 93–7972. CORWIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 870 S. W. 2d 23.

No. 93–8053. PRICE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 207.

No. 93–8224. BAGNOLI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 90.

No. 93–8286. GOLLEHON *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 262 Mont. 1, 864 P. 2d 249.

No. 93–8308. ROGERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1025.

No. 93–8463. BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 12 F. 3d 218.

No. 93–8464. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 165.

No. 93–8467. BUTTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1500.

No. 93–8473. WARD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 242 Ill. App. 3d 1106, 657 N. E. 2d 99.

No. 93–8491. TURNER *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 262 Mont. 39, 864 P. 2d 235.

No. 93–8553. MATOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 93–8563. BARNES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 680.

No. 93–8631. CARROLL *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 410.

No. 93–8674. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 597.

No. 93–8678. ALEBORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 1558.

No. 93–8679. DOBBS ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 408.

No. 93–8690. DETRICK *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 114.

No. 93–8698. FERGUSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 F. 3d 385.

No. 93–8708. LUNSFORD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 158 Ill. 2d 23, 630 N. E. 2d 794.

No. 93–8712. LARISCY ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 413.

No. 93–8722. WASHINGTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 12 F. 3d 1128.

No. 93–8735. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 208.

No. 93–8747. WARING *v.* DELO, SUPERINTENDENT, MISSOURI DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 7 F. 3d 753.

No. 93–8752. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1545.

No. 93–8754. SMITH *v.* LUCAS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 359.

No. 93–8755. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 817.

No. 93–8758. CHURCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 59.

No. 93–8762. KROSS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 751.

No. 93–8770. GORBY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 630 So. 2d 544.

No. 93–8777. STAMBOULIDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1231.

No. 93–8785. BLAKEMORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1228.

No. 93–8792. LOWE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 181.

No. 93–8798. WILSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 179 Wis. 2d 660, 508 N. W. 2d 44.

No. 93–8822. DAI QUOC LU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–8828. ALLEN *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 1151.

No. 93–8833. BOCAGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1090.

No. 93–8834. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1246.

No. 93–8836. CEASER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 58.

No. 93–8849. CARROLL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1431.

No. 93–8868. SWAIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1094.

No. 93–8873. SANTOS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 197 App. Div. 2d 378, 602 N. Y. S. 2d 362.

No. 93–8875. SHANNON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 699.

No. 93–8879. CASTILLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 802.

No. 93–8883. COBLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 871 S. W. 2d 192.

No. 93–8885. RIPPEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 603.

No. 93–8886. MICHELLETTI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 13 F. 3d 838.

No. 93–8903. GASTIABURO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 582.

No. 93–8923. JABAAY *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 14 F. 3d 604.

No. 93–8951. BENAVIDES GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1214.

No. 93–8956. BLACKBURN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 353.

No. 93–8962. CHUKWURA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1420.

No. 93–8967. FREEMAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 18 F. 3d 953.

No. 93–8968. ORNELAS-RODRIGUEZ *v.* UNITED STATES; and
No. 93–9205. LOPEZ-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 1339.

No. 93–8972. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 1103.

No. 93–8976. KENT *v.* BECHTEL GROUP, INC. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 27.

No. 93–8984. ARNOLD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 873 S. W. 2d 27.

No. 93–8995. MARKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1096.

No. 93–8999. LAMPKIN *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 251 Ill. App. 3d 361, 622 N. E. 2d 42.

No. 93–9000. MULLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 120.

No. 93–9001. MURRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1215.

No. 93–9002. ZEIGLER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 632 So. 2d 48.

No. 93–9004. MITCHELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–9006. VARNER *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1229.

No. 93–9007. MOSS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–9014. GHOLSON *v.* WRIGHT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 409.

No. 93–9021. WESSELS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 746.

No. 93–9023. CHRISTIAN *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 10 F. 3d 808.

No. 93–9028. LONGWORTH *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 313 S. C. 360, 438 S. E. 2d 219.

No. 93–9033. RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 937.

No. 93–9037. WALKER *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 414.

No. 93–9039. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 F. 3d 206.

No. 93–9045. HOLDREN *v.* TRENT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 57.

No. 93–9048. NORTHINGTON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied. Reported below: 444 Mich. 980, 518 N. W. 2d 481.

No. 93–9052. LYLE *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied. Reported below: 444 Mich. 956, 514 N. W. 2d 767.

No. 93–9054. ROBERTSON *v.* JONES. C. A. 11th Cir. Certiorari denied. Reported below: 12 F. 3d 219.

No. 93–9055. RICHARDSON *v.* FRANKLIN. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 1480, 620 N. E. 2d 853.

No. 93–9058. TANNER ET AL. *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–9059. LEONARD *v.* NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–9064. SOULE *v.* THOMAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1108.

No. 93–9068. TAYLOR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 630 So. 2d 1038.

No. 93–9071. WARMAN *v.* SOMMERSET COUNTY COMMISSIONERS ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–9073. HAMMOND *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–9076. GASTER *v.* CATOE, DEPUTY COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1429.

No. 93–9078. GREEN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 93–9079. HUNT *v.* BENNETT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1263.

No. 93–9081. JONES *v.* JIVE PUBLISHING ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–9085. DIXON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1106.

No. 93–9088. THOMPSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–9089. UPLINGER *v.* WHITE, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1229.

No. 93–9090. KNIGHT *v.* WEST VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 595.

No. 93–9096. DELBRIDGE ET AL. *v.* FRANCO ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–9097. AWOFOLU *v.* CITY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 230.

No. 93–9102. CASTRO VASQUEZ *v.* MYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 33.

No. 93–9103. HARDY *v.* PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 152 Pa. Commw. 648, 619 A. 2d 1092.

No. 93–9106. HERZOG *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 409.

No. 93–9108. EVANS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 333 Md. 660, 637 A. 2d 117.

No. 93–9110. CROSS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 535 Pa. 38, 634 A. 2d 173.

No. 93–9113. BAKER *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 1102.

No. 93–9117. DEHLER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 93–9118. BROWN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 93–9121. ROBEDEAUX *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 866 P. 2d 417.

No. 93–9123. BOYD *v.* WRIGHT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 17 F. 3d 1433.

No. 93–9126. AGBADA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1544.

No. 93–9128. APELT *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 369, 861 P. 2d 654.

No. 93–9133. SULLIVAN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 636 A. 2d 931.

No. 93–9134. STONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 934.

No. 93–9136. GILLIAM *v.* SMITH, WARDEN, ET AL. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 93–9139. STAPLES *v.* LUKEMIRE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 410.

No. 93–9140. HOOD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–9144. STEIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 632 So. 2d 1361.

No. 93–9145. RODENBAUGH *v.* KNISLEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–9146. NEWBY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 11 F. 3d 1143.

No. 93–9148. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1214.

No. 93–9149. GONZALEZ MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1215.

No. 93–9150. MITCHELL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–9151. WOODS *v.* BURTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 93–9152. VEY *v.* COLVILLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–9157. FLEMING *v.* ROCHA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1084.

No. 93–9158. HICKEY ET AL. *v.* WELLESLEY SCHOOL COMMITTEE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 14 F. 3d 44.

No. 93–9160. DOERR *v.* COUNTY OF SAN BERNARDINO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–9164. CLARK *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 960.

No. 93–9165. APELT *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 349, 861 P. 2d 634.

No. 93–9166. BARTEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1105.

No. 93–9169. REESE *v.* VANKIRK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 411.

No. 93–9170. RANDOLPH *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 20 Cal. App. 4th 1836, 25 Cal. Rptr. 2d 723.

No. 93–9172. OLSZEWSKI *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 416 Mass. 707, 625 N. E. 2d 529.

No. 93–9173. YOUNG *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–9174. PURLANTOV *v.* WELLS FARGO BANK, N. A., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–9175. NORTHINGTON *v.* BURRESS, JUDGE, MICHIGAN CIRCUIT COURT, 44TH CIRCUIT. Sup. Ct. Mich. Certiorari denied. Reported below: 444 Mich. 983, 518 N. W. 2d 481.

No. 93–9176. PRESSLEY *v.* HAIR. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 166.

No. 93–9177. RHEUARK *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–9178. SIMMONS *v.* LOUISIANA (three cases). Sup. Ct. La. Certiorari denied. Reported below: 635 So. 2d 1103 (first case); 634 So. 2d 856 (second and third cases).

No. 93–9179. BUCK *v.* REISMAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–9181. ADLINGTON *v.* HOUSTON. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 93–9182. CHILDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93–9183. DAY *v.* WAITS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1098.

No. 93–9184. ABDUS-SABIR *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 57.

No. 93–9185. CRESCENZI *v.* SCHERLING ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–9186. WHITLEY *v.* CITY OF TAMPA, FLORIDA, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 637 So. 2d 239.

No. 93–9193. HICKS *v.* WRIGHT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 8.

No. 93–9195. RICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 413.

No. 93–9196. ODOM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 13 F. 3d 949.

No. 93–9197. WASH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 215, 861 P. 2d 1107.

No. 93–9199. ALTHOFF ET VIR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 93–9201. GOSCH *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 93–9203. GRANT *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 465, 620 N. E. 2d 50.

No. 93–9204. HERNANDEZ *v.* COUGHLIN, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 18 F. 3d 133.

No. 93–9207. ELLISON *v.* MAKEL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1219.

No. 93–9208. HERNANDEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1216.

No. 93–9212. WILLIAMS *v.* SERVICE ELECTRICAL SUPPLY CO. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 645.

No. 93–9214. BOWEN *v.* KERNAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 393.

No. 93–9217. CRANDALL *v.* BURTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1231.

No. 93–9218. BOYD *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 33 F. 3d 64.

No. 93–9221. ECHENIQUE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1221.

No. 93–9222. HUMISTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 20 Cal. App. 4th 460, 24 Cal. Rptr. 2d 515.

No. 93–9223. GRAVES *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 93–9224. SHURN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 866 S. W. 2d 447.

No. 93–9225. SLOAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 936.

No. 93–9228. DERRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 412.

No. 93–9230. WEAVER *v.* SCHOOL BOARD OF LEON COUNTY. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 624 So. 2d 761.

No. 93–9231. WHITNEY *v.* CRUZ ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 9.

No. 93–9233. SANFORD *v.* HILDRETH ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–9234. THANDIWE *v.* COMPTON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–9235. GHENT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93–9238. ERGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 24.

No. 93–9239. DAVIS ET AL. *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 642.

No. 93–9242. SANDS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 728.

No. 93–9245. STUCKEY *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 93–9247. WARREN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 93–9248. SANDERS *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 225.

No. 93–9249. HORNER *v.* UNITED STATES; and
No. 93–9397. JULIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1452.

No. 93–9250. JONES *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 125 Idaho 294, 870 P. 2d 1.

No. 93–9251. HAYES *v.* BURTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1231.

No. 93–9256. BERRY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–9258. LYNCH ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 93–9259. MCKENZIE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 21.

No. 93–9260. MORAN *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 52.

No. 93–9263. SHELTON *v.* LORUSSO, JUDGE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 9.

No. 93–9264. SHELTON *v.* ESTATE OF FREEMAN. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 198 App. Div. 2d 897, 606 N. Y. S. 2d 1019.

No. 93–9265. PONCE-SANTOYO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1216.

No. 93–9268. MEREDITH *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 211 Ga. App. 213, 438 S. E. 2d 644.

No. 93–9269. PREUSS *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 93–9270. BAKER *v.* MILLER ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–9273. LONAY *v.* STOOKEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 631.

No. 93–9274. HUNGER ET AL. *v.* LEININGER, SUPERINTENDENT, ILLINOIS STATE BOARD OF EDUCATION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 15 F. 3d 664.

No. 93–9275. HAMILTON *v.* MORRISON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–9276. EWING *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 444 Mich. 907, 512 N. W. 2d 320.

No. 93–9282. BENT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 165 and 166.

No. 93–9283. WEBB *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 494, 862 P. 2d 779.

No. 93–9286. MARTIN *v.* WILKINSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1220.

No. 93–9287. MACIEL *v.* YLST, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 28.

No. 93–9288. LEONARD *v.* ROSE'S DEPARTMENT STORE. Sup. Ct. Del. Certiorari denied. Reported below: 639 A. 2d 74.

No. 93–9289. MELENDEZ *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1107.

No. 93–9290. MCDONALD *v.* BOYDSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 465.

No. 93–9291. SANDERS *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 264 Mont. 529, 872 P. 2d 336.

No. 93–9292. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 13.

No. 93–9293. DICK *v.* YELLOW CAB CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–9296. BAKER *v.* KELLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–9300. YNFANTE *v.* UNITED STATES; and
No. 93–9328. DELEON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 993 F. 2d 913.

No. 93–9301. PEREZ-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 403.

No. 93–9303. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 1098.

No. 93–9305. OCCHINO *v.* LANNON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 23.

No. 93–9308. GIBBS *v.* OKLAHOMA DEPARTMENT OF HUMAN SERVICES, AFFIRMATIVE ACTION UNIT. Ct. App. Okla. Certiorari denied.

No. 93–9309. BOOKER HARPER *v.* PEARSON, CIRCUIT JUDGE, CIRCUIT COURT OF ARKANSAS, CRAIGHEAD COUNTY. Sup. Ct. Ark. Certiorari denied.

No. 93–9311. KRAFT *v.* EKCO HOUSEWARES CO. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 1225.

No. 93–9313. GILBERT *v.* CALIFORNIA PUBLIC UTILITIES COMMISSION ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–9314. GABRELIAN *v.* GABRELIAN. Ct. App. N. Y. Certiorari denied. Reported below: 83 N. Y. 2d 801, 633 N. E. 2d 491.

No. 93–9317. NEWTON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 93–9318. LEAKE *v.* NORTHERN VIRGINIA ASSOCIATION OF REALTORS. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 595.

No. 93–9321. GREGORY *v.* LAWHORN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 594.

No. 93–9325. LONG *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–9326. MOORE *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–9327. WHITE *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 870 P. 2d 424.

No. 93–9331. TOWNLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 52.

No. 93–9334. MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 417.

No. 93–9339. VINCENT *v.* REYNOLDS MEMORIAL HOSPITAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 598.

No. 93–9340. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 93–9341. DE VONISH *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 107.

No. 93–9347. PATTERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 20 F. 3d 809.

No. 93–9348. PRENTZEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1555.

No. 93–9349. METALLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 93–9350. OSIRIS *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 318 Ore. 459, 871 P. 2d 122.

No. 93–9351. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–9353. SMITH *v.* DIXON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 956.

No. 93–9354. WALLACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 32.

No. 93–9355. CARROLL *v.* CRIST, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 25.

No. 93–9356. WORSHAM *v.* PRICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 216.

No. 93–9359. DAWSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 936.

No. 93–9360. ALLEN *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 868 P. 2d 379.

No. 93–9362. SCOTT *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 177 Ariz. 131, 865 P. 2d 792.

No. 93–9363. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 32.

No. 93–9366. MITCHELL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–9367. GOMEZ-PABON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 19 F. 3d 7.

No. 93–9368. LOVE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 199 App. Div. 2d 1024, 608 N. Y. S. 2d 916.

No. 93–9369. MACIAS *v.* ANDERSON, JUDGE, OFFICE OF HEARING AND APPEALS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 239.

No. 93–9371. DOTSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 183 Wis. 2d 431, 516 N. W. 2d 20.

No. 93–9372. MUSSER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1222.

No. 93–9373. BROWNER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 628 A. 2d 642.

No. 93–9374. ESPINUEVA *v.* DALTON, SECRETARY OF THE NAVY. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 430.

No. 93–9375. KNELLER *v.* KNELLER. Super. Ct. Pa. Certiorari denied.

No. 93–9376. GULBENKIAN *v.* KAISER FOUNDATION HOSPITALS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–9378. KIMBERLIN *v.* UNITED STATES; and
No. 93–9461. FULLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 F. 3d 1156.

No. 93–9379. BARTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1228.

No. 93–9380. GAERTTNER *v.* LOVE, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 93–9381. GATTIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 637 A. 2d 808.

No. 93–9382. KING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–9383. HIBBLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93–9384. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 397.

No. 93–9385. WYANT *v.* OHIO; and
No. 94–5135. BLAZER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio St. 3d 162, 624 N. E. 2d 722.

No. 93–9386. SOLIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 20 Cal. App. 4th 264, 25 Cal. Rtpr. 2d 184.

No. 93–9387. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 20.

No. 93–9388. PEARSALL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 636 A. 2d 966.

No. 93–9389. ROANE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93–9391. HORDGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 52.

No. 93–9393. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 1, 859 P. 2d 673.

No. 93–9394. HUNES *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 274 Ark. 268, 623 S. W. 2d 835.

No. 93–9395. ELLINGTON *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 394.

No. 93–9396. AVERHART *v.* SHETTLE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 1225.

No. 93–9398. GRAIBE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 93–9399. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 468.

No. 93–9400. GARY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 F. 3d 1123.

No. 93–9401. ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 31.

No. 93–9402. HUDSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 157 Ill. 2d 401, 626 N. E. 2d 161.

No. 93–9403. AQUIL *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–9404. PHELPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1334.

No. 93–9405. CARSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 576.

No. 93–9406. TALK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 369.

No. 93–9407. SHAFFER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 93–9408. COLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 93–9409. BIGG *v.* SELECTIVE SERVICE SYSTEM. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 102.

No. 93–9410. DYER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 1421.

No. 93–9411. ROGERS *v.* ALABAMA; and
No. 93–9560. MUSGROVE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 638 So. 2d 1360.

No. 93–9412. QUANG LY TRAN *v.* CITY OF COLUMBUS, OHIO, ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 93–9413. OSORIO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–9414. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 801.

No. 93–9415. MOSAVI ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 93–9416. MARCUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 599.

No. 93–9417. HURST *v.* UNIVERSITY OF WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1440.

No. 93–9418. FLOWERS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 93–9419. SIMS *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 93–9420. CROWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1452.

No. 93–9421. DENSMORE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–9422. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 322, 862 P. 2d 710.

No. 93–9423. MCLEOD *v.* LOUDOUN COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. Ct. App. Va. Certiorari denied.

No. 93–9424. SHELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 13.

No. 93–9425. St. Louis *v.* McClellan, Superintendent, Southport Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1090.

No. 93–9426. Mujihadeen *v.* McWherter, Regional Administrator, West Tennessee Region. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1220.

No. 93–9427. McManus *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1439.

No. 93–9428. Williamson et al. *v.* King County, Washington. Ct. App. Wash. Certiorari denied.

No. 93–9429. Lockett *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 14.

No. 93–9430. Shaffer *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 413.

No. 93–9432. Dooley *v.* Morgan, Superintendent, State Correctional Institution at Smithfield. C. A. 3d Cir. Certiorari denied.

No. 93–9435. Robinson *v.* United States District Court for the Northern District of Florida. C. A. 11th Cir. Certiorari denied.

No. 93–9436. Voth *v.* Maass, Superintendent, Oregon State Penitentiary. Sup. Ct. Ore. Certiorari denied.

No. 93–9437. Cole *v.* Ogorzolka et al. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 23.

No. 93–9438. Robbins *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 93–9440. Rodenbaugh *v.* Curto. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1431.

No. 93–9442. Cannon *v.* Indiana. Ct. App. Ind. Certiorari denied.

No. 93–9443. Whitaker *v.* Superior Court of California, Alameda County. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1111.

No. 93–9445. JEFFERSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–9446. FIELDS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1227.

No. 93–9447. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 12.

No. 93–9448. HAYNES *v.* HARTMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 17 F. 3d 1433.

No. 93–9449. PARGO *v.* FIRST REALTY PROPERTY MANAGEMENT, LTD., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1437.

No. 93–9450. LUNA *v.* COURT OF APPEALS OF OHIO, HURON COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1421, 631 N. E. 2d 161.

No. 93–9451. CURTIS *v.* BULLDOG LEASING CO., INC., ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 630 So. 2d 1060.

No. 93–9452. CRAWFORD *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 52.

No. 93–9453. BROWN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–9454. SCHUBERT *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 625 N. E. 2d 505.

No. 93–9455. SIMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 20.

No. 93–9456. ALVAREZ *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–9457. LEWIS *v.* SEIDMAN, CHAIRMAN, BOARD OF DIRECTORS, FEDERAL DEPOSIT INSURANCE CORPORATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 967 F. 2d 587.

No. 93–9458. GERMINARO *v.* AMOCO OIL CO., INC. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1091.

No. 93–9459. ROUNDTREE *v.* MILLER ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–9460. GRAYSON *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 93–9462. MINNIFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 15.

No. 93–9463. MORRIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 93–9465. WILKES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 631 A. 2d 880.

No. 93–9466. CARTER *v.* GUNTER ET AL.; and
No. 93–9467. CARTER *v.* PADOVEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 404.

No. 93–9468. EVERETTS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 627 A. 2d 981.

No. 93–9469. JOHNSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–9470. GARCEAU *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 140, 862 P. 2d 664.

No. 93–9471. DEBARDELEBEN *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 93–9472. BURGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 93–9473. COLLINS *v.* KINCHELOE, SUPERINTENDENT, SPRING CREEK CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 26.

No. 93–9475. BARRAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 29.

No. 93–9476. THOMAS ET UX. *v.* UNITED STATES FIDELITY & GUARANTY CO. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 93–9477. SEYMOUR *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 98 Md. App. 745.

No. 93–9479. SAMUELS *v.* MANN, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 13 F. 3d 522.

No. 93–9480. SANDOVAL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–9485. EDWARDS *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1551.

No. 93–9486. LORD *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 123 Wash. 2d 296, 868 P. 2d 835.

No. 93–9487. MICHEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1096.

No. 93–9489. GIBSON *v.* NORTH AMERICAN FREE TRADE AGREEMENT. C. A. 3d Cir. Certiorari denied.

No. 93–9490. CHRISTOPHER *v.* STONE. Cir. Ct. Monongalia County, W. Va. Certiorari denied.

No. 93–9491. CUSTARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 34.

No. 93–9492. AVALOS-ZARATE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 34.

No. 93–9493. BLODGETT *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 510 N. W. 2d 910.

No. 93–9494. CASARES-CARDENAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 1283.

No. 93–9495. ROACH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 935.

No. 93–9497. POOLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 20.

No. 93–9498. DEAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 30.

No. 93–9499. CUDJO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 585, 863 P. 2d 635.

No. 93–9500. NEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 93–9501. YACKS *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 20.

No. 93–9502. BENNETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 21.

No. 93–9503. DOUGLAS *v.* WEIL, GOTSHAL & MANGES. C. A. 2d Cir. Certiorari denied.

No. 93–9504. MASON *v.* MEINERS. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1228.

No. 93–9505. BARLOW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 17 F. 3d 85.

No. 93–9507. BUCKHALTON *v.* BENSON, WARDEN, ET AL. Ct. App. Minn. Certiorari denied.

No. 93–9508. SOLAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 93–9509. BREWER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 200 App. Div. 2d 579, 606 N. Y. S. 2d 292.

No. 93–9510. BURKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 93–9511. CHILES *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 254 Kan. 888, 869 P. 2d 707.

No. 93–9513. EDMONDS *v.* THOMPSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 17 F. 3d 1433.

No. 93–9514. GRIFFITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 17 F. 3d 865.

No. 93–9515. LEE *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 19 F. 3d 40.

No. 93–9516. KARIM-PANAHI *v.* LOS ANGELES POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1086.

No. 93–9517. VENERI *v.* DOMOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 93–9518. SAELEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1095.

No. 93–9519. FIGERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 22.

No. 93–9520. GHOLSON *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 11.

No. 93–9521. GARRISON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–9522. SUMMERLIN *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 93–9523. GOCKEN *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 93–9524. WINSTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–9525. SMITH *v.* LUCAS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 638.

No. 93–9526. ALTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1221.

No. 93–9527. BOYD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1441.

No. 93–9529. SCHWARZ *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–9530. ADKINS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 639 So. 2d 522.

No. 93–9531. BITTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 35.

No. 93–9532. CAMPBELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 18 F. 3d 953.

No. 93–9533. GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 408.

No. 93–9534. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 907.

No. 93–9535. BAINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 303.

No. 93–9536. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 18 F. 3d 1337.

No. 93–9537. BRYANT *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–9539. MCLAURIN *v.* COWHEY ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–9540. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 16.

No. 93–9541. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1116.

No. 93–9542. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 17 F. 3d 230.

No. 93–9543. SCHINDLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–9544. STEWART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 93–9545. WEBBER *v.* FRANKLIN COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari before judgment denied.

No. 93–9546. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 93–9547. FAULKNER *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93–9549. GRADO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 34.

No. 93–9550. JONES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 904, 440 S. E. 2d 161.

No. 93–9551. COFIELD *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 93–9552. RIVERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–9554. MERAZ-PERU *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 24 F. 3d 1197.

No. 93–9555. MITCHELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1185.

No. 93–9556. OLIVA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1125.

No. 93–9557. REAVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 13 F. 3d 711.

No. 93–9558. MEO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1093.

No. 93–9559. ROBERTSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 871 S. W. 2d 701.

No. 93–9561. RIVERA *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1232.

No. 93–9562. BRYSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 412.

No. 93–9563. GIVENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 35.

No. 93–9565. ALVAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1536.

No. 93–9566. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 1150.

No. 93–9567. McCoy *v.* Scott, Director, Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1093.

No. 93–9569. Head *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 626 A. 2d 1382.

No. 93–9570. Freedlander *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 12.

No. 93–9571. Jordan, aka Woods *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 633 A. 2d 373.

No. 93–9572. Everett *v.* United States. Ct. App. D. C. Certiorari denied.

No. 93–9573. Jimenez *v.* General Motors Corp. et al. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 601.

No. 93–9574. Williams *v.* Scott, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 66 and 70.

No. 93–9576. Jestice *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 93–9578. Lang *v.* Department of Health and Human Services. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 936.

No. 93–9579. Leppard *v.* Chapleau, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1433.

No. 93–9580. Lee *v.* Benjamin Franklin Federal Savings Assn. et al. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1215.

No. 93–9581. Lloyd *v.* Shalala, Secretary of Health and Human Services. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1090.

No. 93–9582. Emerson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 974 F. 2d 687.

No. 93–9583. Fugarino *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 93–9584. ACUNA *v.* DOE, MEDICAL STAFF AT MARION COUNTY SUPERIOR COURT JAIL, ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–9586. ROBERTS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 868 P. 2d 712.

No. 93–9587. REED *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 8 F. 3d 72.

No. 93–9588. MYERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 18 F. 3d 153.

No. 93–9589. TEMPELMAN ET UX. *v.* POTVIN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 14 F. 3d 45.

No. 93–9590. ANDRISANI *v.* SAUGUS COLONY LTD. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–9591. STYERS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 177 Ariz. 104, 865 P. 2d 765.

No. 93–9592. BALLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 935.

No. 93–9594. BILAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1441.

No. 93–9595. AYALA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 303.

No. 93–9596. CANCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 467.

No. 93–9598. GUZMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1442.

No. 93–9599. POOLE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 630 A. 2d 1109.

No. 93–9600. PETERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 93–9601. REYES-MOGOLLON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1442.

No. 93–9603. LANKFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 31.

No. 93–9604. LEWIS *v.* THOMPSON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 93–9605. MITCHELL *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 93–9606. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 93–9607. SIQUEIROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 93–9608. VASQUEZ-VENEGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 93–9609. ARRINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 425.

No. 93–9610. CONDREN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1190.

No. 93–9611. FRANGENBERG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 15 F. 3d 100.

No. 93–9612. IN RE FROMAL. C. A. 4th Cir. Certiorari denied.

No. 93–9613. EMERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 93–9615. SACK *v.* ST. FRANCIS HOSPITAL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 93–9616. FLATTUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 93–9617. JOHNSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 93–9619. LENNICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 F. 3d 814.

No. 93–9620. ROGERS *v.* REED-FLEMING ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–9621. SCOTT *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 637 So. 2d 236.

No. 93–9622. TRUJILLO-ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1265.

No. 93–9623. TRANTINO *v.* ROTHSTEIN. Sup. Ct. Conn. Certiorari denied. Reported below: 228 Conn. 854, 635 A. 2d 813.

No. 93–9624. BATTEN *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 93–9625. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 1238.

No. 93–9626. BUCKLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 93–9627. ABDULLAH *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 18 F. 3d 571.

No. 93–9628. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 14 F. 3d 337.

No. 93–9629. BANIC *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 93–9631. BISBY *v.* ZENON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1439.

No. 93–9632. BAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 17 F. 3d 94.

No. 93–9633. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1442.

No. 93–9634. SAMSON *v.* THOMPSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 424.

No. 93–9635. BASS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 93–9636. BRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 93–9637. BRADLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1447.

No. 93–9638. McDonald *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1437.

No. 93–9639. McNair *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 410.

No. 93–9640. Rodenbaugh *v.* Singer. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1431.

No. 93–9641. Quintanilla *v.* Orange County Personnel Division of Sheriff Coroner Department et al. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1440.

No. 93–9642. Prince *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 93–9643. Mack *v.* Department of the Army et al. C. A. 2d Cir. Certiorari denied.

No. 93–9644. Reynolds *v.* Borg, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1115.

No. 93–9647. Bouler *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 425.

No. 93–9648. Burnside *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 93–9649. Showell *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 630 A. 2d 1109.

No. 93–9650. Agha *v.* West, Secretary of the Army, et al. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 25.

No. 93–9651. Harris *v.* Padu. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–9654. Enogwe *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1215.

No. 93–9655. Ferdik *v.* McFadden, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 93–9656. Harrell *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 182 Wis. 2d 408, 513 N. W. 2d 676.

No. 93–9657. HUBBARD *v.* VOINOVICH, GOVERNOR OF OHIO, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1402, 629 N. E. 2d 1365.

No. 93–9658. FRIDAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 93–9659. HARRINGTON *v.* STRAW, DIRECTOR, DEFENSE LOGISTICS AGENCY. C. A. D. C. Cir. Certiorari denied.

No. 93–9660. HENSLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 936.

No. 93–9661. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1434.

No. 93–9662. AGUILAR *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 117 N. M. 501, 873 P. 2d 247.

No. 93–9663. DUBUC *v.* MUSSEMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 405.

No. 93–9664. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1445.

No. 93–9665. CHAVERS *v.* PRUNTY, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–9666. WEIDRICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 32.

No. 93–9667. VILLAMONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 8 F. 3d 35.

No. 93–9668. STEWART *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–9669. SHAW *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 137.

No. 93–9671. DEFELICE *v.* BERTON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 121.

No. 93–9672. SANCHEZ *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 29.

No. 93–9676. MARCUS *v.* LEVIN. Ct. App. N. Y. Certiorari denied. Reported below: 83 N. Y. 2d 847, 634 N. E. 2d 605.

No. 93–9677. PETTIGREW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1229.

No. 93–9678. RICHARDSON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 334 Md. 212, 638 A. 2d 753.

No. 93–9679. MERRILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 465.

No. 93–9680. HERNAN MONTES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–9681. RODRIGUEZ *v.* ALFORD, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 239.

No. 93–9682. MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1442.

No. 93–9683. MCMILLAN *v.* GOMEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 465.

No. 93–9684. MCNEELY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 886.

No. 93–9685. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 413.

No. 93–9686. CORONEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 93–9687. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 F. 3d 1173.

No. 93–9688. WASHINGTON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 639 A. 2d 75.

No. 93–9691. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 30.

No. 93–9692. FERGUSON *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 93–9693. HARDING *v.* NEAL, WARDEN, ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 642 A. 2d 837.

No. 93–9694. SPENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1446.

No. 93–9695. BROWN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 425.

No. 93–9696. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 35.

No. 93–9697. BRANCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 403.

No. 93–9700. MOUNEU *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 93–9701. MORRIS *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 93–9702. PIERRO *v.* CITY OF BAKERSFIELD ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–9703. HUMPHREY *v.* BRIGANO, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–9704. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 93–9705. MCDOWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 93–9706. ROSAS *v.* MAYWOOD, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 1078.

No. 93–9707. CAIN *v.* VICKERS ET AL. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 93–9708. BOWE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 20.

No. 93–9709. GIBBS *v.* HASKELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93–9710. BARNES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 876 S. W. 2d 316.

No. 93–9711. CRUCE *v.* UNITED STATES; and
No. 93–9712. BURGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 70.

No. 93–9713. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1438.

No. 93–9715. WINDOM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 1190.

No. 93–9716. MINIER-CONTRERAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 726.

No. 93–9717. MULDROW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 1332.

No. 93–9718. HARSHEFI ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 426.

No. 93–9719. FRANK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 93–9721. HUNT *v.* CALIFORNIA (two cases). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–9723. ALLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 408.

No. 93–9724. BROWN *v.* SNOW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1445.

No. 93–9725. SIMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 467.

No. 93–9726. TUCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 469.

No. 93–9727. BROWN *v.* SNOW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1445.

No. 93–9728. WHALEN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1421, 875 P. 2d 1083.

No. 93–9730. VERNON *v.* ROSEMEYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–9731. CANAPE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 864, 859 P. 2d 1023.

No. 93–9732. BOWLING *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 873 S. W. 2d 175.

No. 93–9733. BURTRUM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1299.

No. 93–9734. LUAN VAN HOANG *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 872 S. W. 2d 694.

No. 93–9735. WEST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 15 F. 3d 119.

No. 93–9736. SANTIAGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1092.

No. 93–9737. SEARLES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 24 F. 3d 1464.

No. 93–9739. STEWART *v.* IRBY-WYNTER ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–9740. STRINGER *v.* MCMILLIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 93–9741. AGEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 469.

No. 93–9742. DAVIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 199 App. Div. 2d 61, 605 N. Y. S. 2d 244.

No. 93–9743. CHAMBERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 93–9744. GOSSAGE *v.* BARBOUR, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 93–9745. KENNEDY *v.* LITTLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 237.

No. 93–9746. ELLIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 867 P. 2d 1289.

No. 93–9747. ESTRADA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 93–9750. BASS *v.* HODGES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1428.

No. 93–9752. DULANEY *v.* WILDMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1219.

No. 93–9753. HOWARD *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 394.

No. 93–9754. FREIBOTH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 252 Ill. App. 3d 1108, 667 N. E. 2d 179.

No. 93–9755. HUNT *v.* GRINKER, COMMISSIONER, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 221.

No. 93–9756. HEWLETT *v.* GREEN, CLERK, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–9757. STAKNIS, AKA FIALK *v.* ESTATE OF MOORE. Ct. App. Wis. Certiorari denied. Reported below: 180 Wis. 2d 469, 514 N. W. 2d 54.

No. 93–9759. LOVEJOY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 601.

No. 93–9760. PUIG-INFANTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 929.

No. 93–9761. MEDLOCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 12 F. 3d 185.

No. 93–9762. RUSSELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93–9763. DAVIS *v.* HANRAHAN. C. A. 8th Cir. Certiorari denied. Reported below: 22 F. 3d 309.

No. 93–9764. BESINGA *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 14 F. 3d 1356.

No. 93–9766. WIGERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 560.

No. 93–9767. STEVENSON *v.* HALE MAHAOLU. Int. Ct. App. Haw. Certiorari denied. Reported below: 10 Haw. App. 630, 875 P. 2d 226.

No. 93–9768. MOAZZAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 93–9770. AUMADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 469.

No. 93–9771. DINGLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 470.

No. 93–9772. YORK *v.* CAPITAL CITIES/ABC, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1091.

No. 93–9774. MAROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 93–9775. LENIHAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 93–9776. AGUILAR *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 117 N. M. 501, 873 P. 2d 247.

No. 93–9778. GWYNN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1184.

No. 93–9779. FRASER *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 470.

No. 93–9782. ORTIZ *v.* HOKE. Ct. App. N. Y. Certiorari denied. Reported below: 83 N. Y. 2d 323, 632 N. E. 2d 861.

No. 93–9783. PEARSON *v.* SOUTHERLAND ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–9785. THOMAS *v.* MCMACKIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93–9786. COUSINO *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–9788. BOHUK *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 269 N. J. Super. 581, 636 A. 2d 105.

No. 93–9791. FULTON *v.* ALLMOND, ASSOCIATE JUDGE, DISTRICT COURT OF TEXAS, GALVESTON COUNTY, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 93–9792. SMITH *v.* OREGON STATE BAR. Sup. Ct. Ore. Certiorari denied. Reported below: 318 Ore. 47, 861 P. 2d 1013.

No. 93–9793. COOPER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–9794. BROOKS-BEY *v.* HARRISON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 555.

No. 93–9796. DILLMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 384.

No. 94–1. HARRIS *v.* RADIO-ELECTRONICS OFFICERS UNION (RADIO OFFICERS UNION) ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 16 F. 3d 1280.

No. 94–4. FREEDMAN ET AL. *v.* BOARD OF EDUCATION OF THE BOROUGH OF PARK RIDGE, BERGEN COUNTY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–5. RICHARDSON *v.* STATE FARM FIRE & CASUALTY CO. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 29.

No. 94–6. TEXAS *v.* BOWMAN, JUDGE, COUNTY CRIMINAL COURT NUMBER FOUR, TARRANT COUNTY, TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 885 S. W. 2d 421.

No. 94–8. NAKELL *v.* ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 15 F. 3d 319.

No. 94–10. GRECO *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 71 Wash. App. 1027.

No. 94–11. VELEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 94–14. MOSAY ET AL. *v.* BUFFALO BROTHERS MANAGEMENT, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 20 F. 3d 739.

No. 94–15. WATERGATE AT LANDMARK CONDOMINIUM *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 24 F. 3d 635.

No. 94–16. FARMER ET AL. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 212 Ga. App. 372, 442 S. E. 2d 251.

No. 94–17. STEPHENS *v.* IVEY ET AL. Ct. App. Ga. Certiorari denied. Reported below: 212 Ga. App. 407, 442 S. E. 2d 248.

No. 94–19. WATERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 29.

No. 94–21. DUKE ET AL. *v.* SMITH, SECRETARY OF STATE OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–24. KYLE *v.* CAMPBELL SOUP CO. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 928.

No. 94–25. AMBASSADOR BOOKS & VIDEO, INC., ET AL. *v.* CITY OF LITTLE ROCK, ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 858.

No. 94–26. BAUTISTA RIVERA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–27. BOWSER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 425 Pa. Super. 24, 624 A. 2d 125.

No. 94–28. TATE *v.* GILLIAM, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–29. DAVIS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 113 N. C. App. 203, 438 S. E. 2d 759.

No. 94–30. CODDINGTON, PERSONALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CODDINGTON, DECEASED *v.* WABASH LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1083.

No. 94–31. RIGGINS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1223.

No. 94–34. GOODMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 1060.

No. 94–36. ANDERSON *v.* BUSMAN ET AL. Sup. Ct. Va. Certiorari denied.

No. 94–37. GREENFIELD *v.* CITY OF MIAMI BEACH, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1174.

No. 94–40. JACKSON *v.* BRIGLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 280.

No. 94–41. MARTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 F. 3d 943 and 18 F. 3d 1515.

No. 94–46. BERNARD *v.* CITY OF DALLAS WATER DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 94–47. CAMPBELL *v.* WILLIAMS. Sup. Ct. Ala. Certiorari denied. Reported below: 638 So. 2d 804.

No. 94–49. SOLAR-KIST CORP. *v.* CLOTILDE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 137.

No. 94–50. RITCHIE ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 F. 3d 592.

No. 94–51. JONES *v.* SIMON & SCHUSTER, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 94–52. BLAKE ET AL. *v.* PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC., ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 417 Mass. 467, 631 N. E. 2d 985.

No. 94–53. ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, AFFILATED WITH THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL–CIO *v.* INDEPENDENT SPRINKLER CORP. C. A. 11th Cir. Certiorari denied. Reported below: 10 F. 3d 1563.

No. 94–54. SIMPSON ET AL. *v.* DEPARTMENT OF REVENUE OF OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 318 Ore. 579, 870 P. 2d 824.

No. 94–55. CINEL *v.* CONNICK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 1338.

No. 94–57. HTC INDUSTRIES, INC. *v.* PERRY, SECRETARY OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 22 F. 3d 1103.

No. 94–59. COX *v.* NEWTON ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 878 S. W. 2d 105.

No. 94–60. BYRD *v.* PRESENTMENT AGENCY. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 198 App. Div. 2d 348, 605 N. Y. S. 2d 896.

No. 94–61. FELLIN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 432 Pa. Super. 684, 635 A. 2d 202.

No. 94–62. WOODARD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 631 So. 2d 1065.

No. 94–63. MARTINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–65. FODOR *v.* TIME WARNER, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 27.

No. 94–67. REED *v.* DELTA AIR LINES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 94–69. SUNKIST GROWERS, INC. *v.* DEL MONTE CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 10 F. 3d 753.

No. 94–71. LUMBERMENS MUTUAL CASUALTY CO. *v.* S–W INDUSTRIES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 970.

No. 94–73. SOUTHWESTERN BELL TELEPHONE CO. *v.* OKLAHOMA CORPORATION COMMISSION. Sup. Ct. Okla. Certiorari denied. Reported below: 873 P. 2d 1001.

No. 94–74. GARDELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 3d 395.

No. 94–75. KNAPP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1092.

No. 94–76. VELASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 555, 26 Cal. Rptr. 2d 320.

No. 94–77. FOULES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 258 Ill. App. 3d 645, 630 N. E. 2d 895.

No. 94–79. MITCHELL *v.* THOMPSON, INDIVIDUALLY AND AS SHERIFF OF KANKAKEE COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 18 F. 3d 425.

No. 94–80. WILSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF WILSON, DECEASED *v.* MUNICIPALITY OF ANCHORAGE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 398.

No. 94–83. DESALVO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 26 F. 3d 1216.

No. 94–85. RAMIREZ *v.* PACIFIC MARITIME ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1088.

No. 94–88. ISRAEL *v.* ISRAEL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 251 Ill. App. 3d 1115, 661 N. E. 2d 1204.

No. 94–89. JOHNSON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 22 F. 3d 1104.

No. 94–90. WINCHESTER HOMES, INC. *v.* HOOVER UNIVERSAL, INC., ET AL. Sup. Ct. Va. Certiorari denied.

No. 94–91. POMPONIO *v.* BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 1319.

No. 94–92. FULK, ADMINISTRATOR OF THE ESTATE OF TURNER, DECEASED, ET AL. *v.* ILLINOIS CENTRAL RAILROAD CO. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 120.

No. 94–93. TORRES MALDONADO ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 14 F. 3d 95.

No. 94–99. KAWAOKA ET UX. *v.* CITY OF ARROYO GRANDE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 1227.

No. 94–100. FAULKNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 17 F. 3d 745.

No. 94–101. MANN ET AL. *v.* CONLIN. C. A. 6th Cir. Certiorari denied. Reported below: 22 F. 3d 100.

No. 94–103. ADCOX ET AL. *v.* TELEDYNE, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 1381.

No. 94–104. REGALDO *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 872 S. W. 2d 7.

No. 94–107. VERCOE *v.* FIRSTIER BANK, N. A., OMAHA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 907.

No. 94–110. PRI-HAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 94–111. DETERS *v.* JUDICIAL RETIREMENT AND REMOVAL COMMISSION OF KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 873 S. W. 2d 200.

No. 94–114. DAVIS *v.* NEW JERSEY BELL. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1429.

No. 94–117. GRAVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1231.

No. 94–118. D-LANDCO ET AL. *v.* OKLAHOMA DEPARTMENT OF TRANSPORTATION. Ct. App. Okla. Certiorari denied.

No. 94–119. RANKINS ET AL. *v.* LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 637 So. 2d 548.

No. 94–120. BRICKER ET UX. *v.* ROCKWELL HANFORD OPERATIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 F. 3d 598 and 22 F. 3d 871.

No. 94–121. SCHENCK *v.* COMMISSION ON JUDICIAL FITNESS AND DISABILITY OF OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 318 Ore. 402, 870 P. 2d 185.

No. 94–122. LAWRENCE C. *v.* TIMOTHY L. ET AL. Sup. Ct. Wyo. Certiorari denied. Reported below: 870 P. 2d 374.

No. 94–124. FORSYTH ET AL. *v.* VINES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 1527.

No. 94–125. MARINE TOWING, INC., ET AL. *v.* SPHERE DRAKE INSURANCE PLC. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 666.

No. 94–126. WEATHERLY *v.* FEDERAL DEBT MANAGEMENT, INC. Sup. Ct. Tex. Certiorari denied. Reported below: 883 S. W. 2d 171.

No. 94–127. THESENVITZ ET AL. *v.* KAISER ENGINEERS HANFORD CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1090.

No. 94–128. GIVAN-HAMMOUD *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 251 Ill. App. 3d 1111, 661 N. E. 2d 1202.

No. 94–129. PERL *v.* HUNEGS. Ct. App. Minn. Certiorari denied.

No. 94–130. BACON *v.* WILSON. Ct. App. Minn. Certiorari denied.

No. 94–131. TREVINO *v.* LEEDS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 94–132. STEPHENSON ET AL. *v.* WESTERN FARMERS ELECTRIC COOPERATIVE OF ANADARKO, OKLAHOMA. Ct. App. Okla. Certiorari denied. Reported below: 873 P. 2d 311.

No. 94–133. DIETRICH ET UX. *v.* SUN EXPLORATION & PRODUCTION CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 427.

No. 94–137. SEAL *v.* SEAL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–142. AMBURGEY *v.* CITY OF COSTA MESA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–143. NELSON ET AL. *v.* MASSACHUSETTS ET AL. App. Ct. Mass. Certiorari denied. Reported below: 36 Mass. App. 1105, 629 N. E. 2d 1017.

No. 94–145. CATHEDRAL OF JOY BAPTIST CHURCH ET AL. *v.* VILLAGE OF HAZEL CREST ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 713.

No. 94–147. UTAH ET AL. *v.* SALT LAKE COUNTY WATER CONSERVANCY DISTRICT. C. A. 10th Cir. Certiorari denied. Reported below: 14 F. 3d 1489.

No. 94–148. GOMEZ ET AL. *v.* HOUSING AUTHORITY OF CITY OF EL PASO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1169.

No. 94–150. BOWLES *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 94–151. ILLINOIS *v.* PAGE BOOKS, INC., DBA BACHELOR'S LIBRARY ADULT BOOKSTORE. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 235 Ill. App. 3d 765, 601 N. E. 2d 273.

No. 94–152. OTIS ET AL. *v.* CHICAGO & NORTH WESTERN TRANSPORTATION CO. Sup. Ct. Iowa. Certiorari denied. Reported below: 514 N. W. 2d 90.

No. 94–153. COMMERCIAL UNION ASSURANCE CO., PLC, ET AL. *v.* MILKEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 608.

No. 94–154. MEMBERS OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD ET AL. *v.* COMMITTEE TO SAVE THE MOKELUMNE RIVER. C. A. 9th Cir. Certiorari denied. Reported below: 13 F. 3d 305.

No. 94–155. EZEOKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 1547.

No. 94–156. DIGIRLAMO *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 816.

No. 94–157. WITTER ET UX. *v.* NESBIT. Ct. App. Tenn. Certiorari denied. Reported below: 878 S. W. 2d 116.

No. 94–159. O'BRIEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 301.

No. 94–163. KANSAS *v.* VALENZUELA. Ct. App. Kan. Certiorari denied. Reported below: 19 Kan. App. 2d xliv, 870 P. 2d 50.

No. 94–164. MADISON COUNTY FISCAL COURT ET AL. *v.* HORN, BY HIS LIMITED CONSERVATOR, PARKS. C. A. 6th Cir. Certiorari denied. Reported below: 22 F. 3d 653.

No. 94–165. SRINIVASAN *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY (RIO HONDO COMMUNITY COLLEGE DIS-

TRICT, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–166. RAMIREZ *v.* PACIFIC MARITIME ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1088.

No. 94–170. ROSENFELD *v.* RIVER PLACE EAST HOUSING CORP. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 833.

No. 94–174. MITCHELL *v.* UNITED STATES; and SEAVER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 131 (first case); 40 M. J. 293 (second case).

No. 94–175. BIEGELEISEN *v.* JACOBSON. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 198 App. Div. 2d 56, 603 N. Y. S. 2d 148.

No. 94–176. TELELECT, INC. *v.* FENSTERMACHER. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1121.

No. 94–177. BAMFORD ET AL. *v.* UPPER REPUBLICAN NATURAL RESOURCES DISTRICT. Sup. Ct. Neb. Certiorari denied. Reported below: 245 Neb. 299, 512 N. W. 2d 642.

No. 94–178. THOMPSON ET AL. *v.* KENTUCKY FRIED CHICKEN CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 94–180. JONES *v.* SECRETARY OF HEALTH AND HUMAN SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 94–181. SOWASHEE VENTURE *v.* EB, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 1077.

No. 94–184. MIRMAN *v.* SUPREME COURT OF NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 122.

No. 94–185. ANDREWS *v.* ALASKA OPERATING ENGINEERS-EMPLOYERS TRAINING TRUST FUND. Sup. Ct. Alaska. Certiorari denied. Reported below: 871 P. 2d 1142.

No. 94–186. RAGLAND *v.* MINTER. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 94–187. Bradley *v.* West Virginia. Cir. Ct. Wood County, W. Va. Certiorari denied.

No. 94–188. Miller, Administratrix of Estate of Miller, Deceased *v.* Keystone Insurance Co. Sup. Ct. Pa. Certiorari denied. Reported below: 535 Pa. 531, 636 A. 2d 1109.

No. 94–191. Rumsey et al. *v.* New York State Department of Correctional Services et al.; and

No. 94–232. New York State Department of Correctional Services et al. *v.* Rumsey et al. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 83.

No. 94–192. Moldea *v.* New York Times Co. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 310.

No. 94–193. Bright et al. *v.* QSP, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 20 F. 3d 1300.

No. 94–194. Craig, Individually and as Administratrix of the Estate of Craig, Deceased *v.* Atlantic Richfield Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 472.

No. 94–195. Parke-Hayden, Inc. *v.* Loews Theatre Management Corp. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1091.

No. 94–196. Grove North America, Division of Kidde Industries, Inc. *v.* Lowe et al. Sup. Ct. Ala. Certiorari denied.

No. 94–198. Kile *v.* Appellate Department, Superior Court of California, County of Placer (Trepantis, Real Party in Interest). Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–199. Parsons et al., Co-Executors of the Estate of Bowden, Deceased *v.* Delaware Department of Health and Social Services, Division of Social Services. Sup. Ct. Del. Certiorari denied. Reported below: 642 A. 2d 837.

No. 94–200. Higgins et al. *v.* Fegley. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1126.

No. 94–205. Field *v.* Easton et al. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–206. WRIGHT, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID, ET AL. *v.* FRANCES J., BY HER GUARDIAN, MURPHY. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 337.

No. 94–209. MORALES, ATTORNEY GENERAL OF TEXAS, ET AL. *v.* FIRST GIBRALTAR BANK, FSB, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 1032.

No. 94–210. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–213. MOORE *v.* FELGER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 1054.

No. 94–214. HUNTER *v.* NORTHROP UNIVERSITY SCHOOL OF LAW. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–215. MURPHY *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 719.

No. 94–216. JAKABOVITZ *v.* CABRERA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 24 F. 3d 372.

No. 94–217. DYER *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–222. INTERMEDICS, INC. *v.* VENTRITEX CO., INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 139.

No. 94–224. SANTANA, AKA JULIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–225. WVCH COMMUNICATIONS, INC., ET AL. *v.* UPPER PROVIDENCE TOWNSHIP ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 561.

No. 94–227. S–1 AND S–2, BY AND THROUGH THEIR PARENTS AND GUARDIANS AD LITEM, P–1 AND P–2, ET AL. *v.* STATE BOARD OF EDUCATION OF NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 49.

No. 94–228. KAREL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 1054.

No. 94–229. FREDERICK *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 556.

No. 94–230. HAYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 94–233. TAPIA-ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 738.

No. 94–235. LAYNE *v.* WALTER INDUSTRIES, INC., GROUP BENEFIT PLAN FOR SALARIED EMPLOYEES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–245. GAMBOA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–246. BROWN ET AL. *v.* PAIGE, STATE TAX COMMISSIONER OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 191 W. Va. 120, 443 S. E. 2d 462.

No. 94–247. SCOPO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 777.

No. 94–248. WEINGRAD *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE, SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 196 App. Div. 2d 300, 609 N. Y. S. 2d 588.

No. 94–250. IN RE FORMAN. Sup. Ct. La. Certiorari denied. Reported below: 634 So. 2d 330.

No. 94–253. HELI-MEJIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 96.

No. 94–254. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 917.

No. 94–263. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 194.

No. 94–266. WOLFSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 94–269. RUGIERO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 F. 3d 1387.

No. 94–272. LEEDE EXPLORATION ET AL. *v.* NICOR EXPLORATION CO. Ct. App. Okla. Certiorari denied.

No. 94–276. NICHOLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–278. GITTENS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 328.

No. 94–284. BIERI ET AL. *v.* UNITED STATES (two cases). C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 811 (first case) and 819 (second case).

No. 94–285. SMITH *v.* UNITED STATES (two cases). C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 1421 (first case); 19 F. 3d 485 (second case).

No. 94–288. GASKO ET UX. *v.* CELOTEX CORP. ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–296. OCZKOWSKI *v.* YUDES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–303. MEADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 94–305. MOORE *v.* MEMBER DATA SERVICES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 94–306. HENDRICKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 170.

No. 94–307. THIEL *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 183 Wis. 2d 505, 515 N. W. 2d 847.

No. 94–318. SALTARIS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 135.

No. 94–320. KNIGHT *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 632.

No. 94–345. GOETZ *v.* TORDOFF ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 432.

No. 94–5001. BURRESS *v.* PRESBYTERIAN CHURCH ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–5002. DRUMMOND ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1091.

No. 94–5005. STEARMAN *v.* CITY OF GREENVILLE, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1215.

No. 94–5006. BROOKS *v.* FULTON DEPARTMENT OF FAMILY AND CHILDREN SERVICES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1439.

No. 94–5007. CYPRIAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 1189.

No. 94–5008. BROWN *v.* HOWARD-PALMER ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–5009. RENGIFO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1097.

No. 94–5010. ROSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1531.

No. 94–5011. MILLIGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 17 F. 3d 177.

No. 94–5012. ROSE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5013. HARRIS *v.* HATFIELD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 427.

No. 94–5014. IUSAN *v.* NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 200 App. Div. 2d 654, 606 N. Y. S. 2d 771.

No. 94–5015. HALIM *v.* ACCU-LABS RESEARCH, INC. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1436.

No. 94–5017. GARDNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1200.

No. 94–5020. GREEN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 821.

No. 94–5021. PEABODY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 94–5022. MCDONALD *v.* BOYDSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 240.

No. 94–5023. COLVIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94–5024. RADER *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5025. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1107.

No. 94–5026. ALVAREZ CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 133.

No. 94–5027. BUCKALOO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 1443.

No. 94–5028. PRINTUP *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 94–5029. PIZZO *v.* RISINGER. C. A. 5th Cir. Certiorari denied.

No. 94–5030. THOMPSON *v.* RONE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1221.

No. 94–5031. WILLIAMS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 440.

No. 94–5033. CONROD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 94–5034. ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1254.

No. 94–5035. SLADE *v.* WRIGHT. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5036. CODY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1122.

No. 94–5037. ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 94–5039. SMITH *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 937.

No. 94–5041. CHILDRESS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 158 Ill. 2d 275, 633 N. E. 2d 635.

No. 94–5043. MARQUEZ *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 11 F. 3d 1241.

No. 94–5045. COLEMAN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 158 Ill. 2d 319, 633 N. E. 2d 654.

No. 94–5046. KONTAKIS *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 110.

No. 94–5047. KRAWCZUK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 634 So. 2d 1070.

No. 94–5049. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 426.

No. 94–5050. SANDERS *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–5051. HALLMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 23 F. 3d 821.

No. 94–5052. GORTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 58.

No. 94–5053. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1169.

No. 94–5054. FOUST *v.* ORAL ROBERTS UNIVERSITY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1121.

No. 94–5056. HULETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 22 F. 3d 779.

No. 94–5057. ISBY *v.* WRIGHT, SUPERINTENDENT, MAXIMUM CONTROL COMPLEX. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–5058. GUTIERREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1439.

No. 94–5060. SANDERS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 431.

No. 94–5061. SANFORD *v.* MUNICIPAL COURT CITRUS JUDICIAL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 29.

No. 94–5063. STANSBURY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 591 A. 2d 188.

No. 94–5064. BROWNER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5065. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5066. BEDFORD *v.* OHIO; and BEUKE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio. St. 3d 1453, 626 N. E. 2d 957.

No. 94–5067. ANDERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5069. GRUBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 469.

No. 94–5071. HEAD *v.* NORTH CAROLINA PRISONER LEGAL SERVICES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 401.

No. 94–5072. HEAD *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 563.

No. 94–5073. CARRIZALES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 303.

No. 94–5074. VINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 431.

No. 94–5075. DUNCAN *v.* DEL GROSSO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 391.

No. 94–5076. PALOMINO-PEREZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 24 F. 3d 1464.

No. 94–5077. PETERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 F. 3d 540.

No. 94–5078. GARCIA QUINTANIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 94–5079. LLOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 10 F. 3d 1197.

No. 94–5080. ROGERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–5081. LUTCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1216.

No. 94–5082. RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 396.

No. 94–5084. RICCIARDI *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 396.

No. 94–5085. MACIAS *v.* RAUL A. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 94.

No. 94–5086. LEWIS *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY, ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 94–5087. CROSBY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 20 F. 3d 480.

No. 94–5088. BRYAN *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 638 A. 2d 1123.

No. 94–5089. MCINTYRE *v.* LEAVITT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 107.

No. 94–5091. GOMEZ-MORALES *v.* UNITED STATES; and
No. 94–5141. GRISALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1092.

No. 94–5092. GENDREAU *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 161 Vt. 645, 641 A. 2d 1349.

No. 94–5093. ESPARZA *v.* STICE, ASSISTANT DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, SUPPORT SERVICES DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 469.

No. 94–5094. HANKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1173.

No. 94–5095. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–5096. KAMAL *v.* BROWN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–5098. BUSH *v.* CRYSTAL HOMES, INC., ET AL.; BUSH *v.* CRYSTAL HOMES, INC.; and BUSH *v.* LONG ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1436.

No. 94–5100. BRAGGS *v.* MOBILE COUNTY HEALTH DEPARTMENT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 57.

No. 94–5101. DELISLE *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 517 N. W. 2d 216.

No. 94–5102. DEERWESTER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 249 Ill. App. 3d 1109, 660 N. E. 2d 569.

No. 94–5103. BATES *v.* BURTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1175.

No. 94–5104. DUFFEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 536 Pa. 436, 639 A. 2d 1174.

No. 94–5105. BRANSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 113.

No. 94–5106. WALLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 12.

No. 94–5108. THOMPSON *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 450.

No. 94–5109. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1174.

No. 94–5110. ADAIR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 433.

No. 94–5111. DUSSAULT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–5112. BOONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 408.

No. 94–5113. HOLDEN *v.* ALASKA. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–5114. FARMER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1174.

No. 94–5115. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1173.

No. 94–5116. EVANS *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 94–5117. HALIM *v.* WIDNALL, SECRETARY OF THE AIR FORCE. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1433.

No. 94–5118. SAVAGE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 404.

No. 94–5119. TAMAYO *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 94–5120. STROMAN *v.* WEST COAST GROCERY. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 29.

No. 94–5121. JENORIKI *v.* UNITED STATES POSTAL INSPECTION SERVICE OF HOUSTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 240.

No. 94–5123. MELVIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1221.

No. 94–5124. MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 202.

No. 94–5126. NOEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–5127. MOSES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 396.

No. 94–5128. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 926.

No. 94–5129. MCCULLY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 712.

No. 94–5130. PINK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 426.

No. 94–5131. PATINO-CARDONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1173.

No. 94–5132. PORTILLO-VALENZUELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 20 F. 3d 393.

No. 94–5133. NADDI *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–5134. BRELAND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–5136. BOTELLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 409.

No. 94–5137. COWART *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 642.

No. 94–5138. PAXTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 867 P. 2d 1309.

No. 94–5140. SOO HOO *v.* UNITED STATES PAROLE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 94–5142. Flores-Rodriguez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 30.

No. 94–5143. Guinn *v.* Cooper, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 33.

No. 94–5145. Chaffer *v.* Long et al. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 94–5147. Gonzalez *v.* Scott, Director, Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–5149. Fisher *v.* Duncan, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 94–5150. Henning *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 427 Pa. Super. 642, 625 A. 2d 90.

No. 94–5151. Gonzales *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 982.

No. 94–5152. Ellis *v.* Stainer, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1112.

No. 94–5153. Grant *v.* Scully, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 94–5154. Esparza *v.* Doe. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 239.

No. 94–5155. Woods *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1098.

No. 94–5156. Williams *v.* Hill, Superintendent, Odom Correctional Center. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 414.

No. 94–5157. Tejeda *v.* Senkowski, Superintendent, Clinton Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–5158. Burress *v.* Christianity & Crisis, Inc., et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–5159. MOGHAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1538.

No. 94–5160. LAWRENCE *v.* UNITED STATES;
No. 94–5161. LAWRENCE *v.* UNITED STATES; and
No. 94–5224. LAWRENCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 94–5162. OLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 847.

No. 94–5163. MOODY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 94–5164. MONTERO ET AL. *v.* MEYER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 1444.

No. 94–5165. PRAIMNATH *v.* AMERICAN CABLEVISION OF QUEENS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1426.

No. 94–5166. MIDDLETON *v.* FORDICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 238.

No. 94–5167. SANTIAGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–5169. SEATON *v.* ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 94–5170. AYALA *v.* LEONARDO, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 20 F. 3d 83.

No. 94–5172. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 404.

No. 94–5173. JAMESON *v.* COUGHLIN, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 427.

No. 94–5174. FROMAL *v.* MCCAULEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 400.

No. 94–5175. KRISHNAMURTHY ET AL. *v.* NIMMAGADDA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–5176. DiGianni *v.* Abraham & Straus, Inc.; and
No. 94–5361. DiGianni *v.* Macy's Northeast, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 622.

No. 94–5177. Bleicken *v.* Perkins et al. C. A. 1st Cir. Certiorari denied. Reported below: 14 F. 3d 44.

No. 94–5179. Galbraith *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 20 F. 3d 1054.

No. 94–5181. McGill *v.* Faulkner et al. C. A. 7th Cir. Certiorari denied. Reported below: 18 F. 3d 456.

No. 94–5182. Rakes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5184. Ricco *v.* Gallo. C. A. 3d Cir. Certiorari denied.

No. 94–5185. McBride *v.* Jarvis, Warden (three cases). Sup. Ct. Ga. Certiorari denied.

No. 94–5186. Nonnette *v.* Borg, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1115.

No. 94–5187. Russo *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 201 App. Div. 2d 940, 607 N. Y. S. 2d 520.

No. 94–5188. McClung *v.* Smith, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1429.

No. 94–5189. Lee *v.* Scott, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 94–5190. Swann *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 247 Va. 222, 441 S. E. 2d 195.

No. 94–5191. Salim *v.* United States; and
No. 94–5476. Khan *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–5192. Slezak et al. *v.* Evatt et al. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 590.

No. 94–5193. WESLEY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 98 Md. App. 747.

No. 94–5195. CHRISTIANSON *v.* RELFE ET AL. Sup. Ct. Ala. Certiorari denied.

No. 94–5197. CURIALE ET UX. *v.* BURTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5199. KIKUTS *v.* CLINTON COUNTY SOCIAL SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1091.

No. 94–5200. VALLERA *v.* ENDICOTT, SUPERINTENDENT, COLUMBIA CORRECTIONAL INSTITUTION. C. A. 7th Cir. Certiorari denied.

No. 94–5203. CERVANTES DEGORTARI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 94–5204. HINES *v.* ROCHA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–5205. BOMBELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 94–5209. YBARRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1173.

No. 94–5210. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–5211. BURDEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–5212. DIGIOIA *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–5213. BALDWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 166.

No. 94–5215. DAVIS *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 94–5217. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–5218. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 1003.

No. 94–5219. DOMINGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 94–5221. MABERRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1122.

No. 94–5223. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 94–5225. MOORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 22 F. 3d 241.

No. 94–5226. MARIN-CARDONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1097.

No. 94–5227. NOVENE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1221.

No. 94–5229. LASKA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 94–5230. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1030.

No. 94–5231. RUSSELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 426.

No. 94–5232. STERN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–5233. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 433.

No. 94–5234. VASQUEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 F. 3d 900.

No. 94–5236. MCGUIRE *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–5237. LEE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 335 N. C. 244, 439 S. E. 2d 547.

No. 94–5238. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 125.

No. 94–5239. WASHINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 165.

No. 94–5241. TORRES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94–5242. WILSON *v.* CITY OF BERKELEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 235.

No. 94–5243. SLADE *v.* CLARKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5244. WILLIAMS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 211 Ga. App. 393, 439 S. E. 2d 11.

No. 94–5245. CASILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 600.

No. 94–5246. LUCAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 596.

No. 94–5247. CONNOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–5248. SLOAN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–5249. ABENGOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1439.

No. 94–5250. ANGHELUTA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–5251. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1500.

No. 94–5253. MOBLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5257. BOLTON ET UX. *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–5259. BERGEN *v.* WOOD. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 14 Cal. App. 4th 854, 18 Cal. Rptr. 2d 75.

No. 94–5260. D'SOUZA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1091.

No. 94–5262. HYDE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 112.

No. 94–5263. GOWENS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 639 So. 2d 524.

No. 94–5264. EVANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 135.

No. 94–5266. SAUNDERS *v.* CITY OF BEVERLY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 123.

No. 94–5267. WILSON *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–5268. GUZMAN-SALGUERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–5269. GREEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5270. HOLLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1175.

No. 94–5272. BELL *v.* GARNER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1093.

No. 94–5273. BELL *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–5274. GALLANT *v.* MAGNUSSON, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 94–5275. HAMILTON *v.* SEAL, ACTING DIRECTOR, ACTION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 432.

No. 94–5276. EPPS *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 432.

No. 94–5280. PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 290.

No. 94–5282. RUSSELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–5283. MCCULLOUGH *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 94–5284. PRESTON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–5285. ASHFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 16.

No. 94–5286. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 250.

No. 94–5287. KRIKAVA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 433.

No. 94–5289. DAVIS *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1121.

No. 94–5290. CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–5292. BRONSON *v.* DOMOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–5295. CARR *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1111.

No. 94–5296. BENINCASA *v.* BENINCASA. Ct. App. Ohio, Muskingum County. Certiorari denied.

No. 94–5297. WILLIAMS *v.* JIM WALTERS RESOURCES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1175.

No. 94–5298. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–5299. MULLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 125.

No. 94–5300. PONTILLO *v.* UNITED STATES; and
No. 94–5524. BRADY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 26 F. 3d 282.

No. 94–5301. SOWELL *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 424.

No. 94–5302. SPENCER *v.* WORTHINGTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–5303. STONE *v.* UNITED STUDENT AID FUNDS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–5304. TAYLOR *v.* BERNSTEIN. Sup. Ct. Del. Certiorari denied. Reported below: 637 A. 2d 829.

No. 94–5305. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 94–5306. HAYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 408.

No. 94–5307. FLETCHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5308. FRIEND *v.* UNITED TECHNOLOGIES/HAMILTON STANDARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 246.

No. 94–5309. GAINER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1122.

No. 94–5310. JERRY *v.* DOMOVICH, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–5311. HIGGASON *v.* ADANK ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–5312. MCPETERS *v.* CALDERON, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 94–5314. STAMEY *v.* WINN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 1559.

No. 94–5315. STEFFEN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio St. 3d 1462, 627 N. E. 2d 1002.

No. 94–5317. FOGLEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–5320. MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–5321. GRUBBS *v.* WESTERN BAPTIST HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1048.

No. 94–5323. MAGEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–5325. PATRICIA M. *v.* SAN DIEGO COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–5327. SJOGREN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1094.

No. 94–5328. WEST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 252.

No. 94–5329. EASLEY *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 16.

No. 94–5330. EASLEY *v.* MARTIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 15.

No. 94–5331. FERTEL-RUST *v.* CITY OF WAUWATOSA, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–5332. TAYLOR *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1488.

No. 94–5333. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 15 F. 3d 1393.

No. 94–5335. BRUMBY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 47.

No. 94–5339. COTHRAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–5340. COBB *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 875 S. W. 2d 533.

No. 94–5343. WEINSTEIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 24 F. 3d 340.

No. 94–5344. TRICE *v.* AGER ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–5345. NGENEGBO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 404.

No. 94–5346. PLOURDE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 3d 395.

No. 94–5347. MCCOMBS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5348. MLADOSICH-NAVEJAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–5349. POWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 94–5350. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–5351. RUSSEL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–5353. MARLOW *v.* OFFICE OF COURT ADMINISTRATION OF THE STATE OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1091.

No. 94–5355. TAYLOR *v.* PETERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 14 F. 3d 605.

No. 94–5357. HOUSE *v.* CLARKE COUNTY COMMISSION. Sup. Ct. Ala. Certiorari denied. Reported below: 662 So. 2d 927.

No. 94–5358. HUGHES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 949.

No. 94–5359. KENNEDY *v.* ZIMMERMAN, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 122.

No. 94–5362. DIGIANNI *v.* STERN'S; and
No. 94–5363. DIGIANNI *v.* BLOOMINGDALE'S, INC. C. A. 2d Cir. Certiorari denied. Reported below: 26 F. 3d 346.

No. 94–5364. WARREN *v.* COLE. C. A. 6th Cir. Certiorari denied.

No. 94–5365. DANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–5366. CORREIA *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 33 Conn. App. 457, 636 A. 2d 860.

No. 94–5367. MOORE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 335 N. C. 567, 440 S. E. 2d 797.

No. 94–5368. PESEK *v.* COURT OF APPEALS OF WISCONSIN, THIRD DISTRICT, ET AL. Sup. Ct. Wis. Certiorari denied.

No. 94–5369. MEHIO *v.* GRABER ET AL. Ct. App. Utah. Certiorari denied.

No. 94–5371. HANEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 1413.

No. 94–5372. HILLIARD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 94–5373. FRUMENTINO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 256 Ill. App. 3d 1100, 671 N. E. 2d 833.

No. 94–5375. HOFFMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 F. 3d 808.

No. 94–5376. RICHMOND *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 942, 26 Cal. Rptr. 2d 580.

No. 94–5377. ROLLINGS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5378. MCDANIEL *v.* FIRST CITIZENS BANK & TRUST CO. Sup. Ct. N. C. Certiorari denied.

No. 94–5379. LANIER *v.* HAYNES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 819.

No. 94–5383. ROGERS *v.* ZANT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 384.

No. 94–5385. ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 108.

No. 94–5386. ROARK *v.* JACKSON COUNTY. Ct. App. Ore. Certiorari denied. Reported below: 124 Ore. App. 505, 863 P. 2d 491.

No. 94–5388. QUINTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 600.

No. 94–5389. LYONS *v.* SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–5390. MCQUEEN *v.* BRISTER, JUDGE, TEXAS DISTRICT COURT, 234TH DISTRICT. Sup. Ct. Tex. Certiorari denied.

No. 94–5391. RODEN *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–5392. LAWAL *v.* SOUTHERN BELL TELEPHONE & TELEGRAPH CO. Ct. App. Ga. Certiorari denied. Reported below: 209 Ga. App. XXVIII.

No. 94–5393. MCDERMOTT *v.* LYNCH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 566.

No. 94–5394. LOWE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5396. DUSENBERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 94–5397. TRAIL ET UX. *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–5399. PARKER *v.* UNITED STATES; and
No. 94–5400. MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 15.

No. 94–5401. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 135.

No. 94–5402. WALTERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–5405. FORD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 22 F. 3d 374.

No. 94–5407. ZIEREIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1119.

No. 94–5408. DUMORNAY *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1056.

No. 94–5409. BROWN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 16 F. 3d 423.

No. 94–5411. CAMPBELL *v.* SHEEHAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94–5414. SCHULTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1212.

No. 94–5415. BOYD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 94–5418. HARVEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 109.

No. 94–5420. ARNSTEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1111.

No. 94–5422. DEMOLFETTO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 477.

No. 94–5424. SMITH *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 251.

No. 94–5425. WALKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–5426. SHACKELFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 135.

No. 94–5428. VEGA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 560.

No. 94–5431. TICHIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 670.

No. 94–5432. SMITH *v.* UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 94–5433. GORDON *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 640.

No. 94–5434. HARWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5435. JACQUES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–5436. HAMPTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1059.

No. 94–5437. JONES *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 125 Idaho 477, 873 P. 2d 122.

No. 94–5438. HIGGINS *v.* NEAL, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 94–5439. FERTEL-RUST *v.* SECURITY BANK SSB OF MILWAUKEE ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–5443. SHANNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 77.

No. 94–5444. WORTHINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 94–5445. STOTTS *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 94–5447. DELARCO *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 629 So. 2d 140.

No. 94–5448. MORA CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 617.

No. 94–5449. DE LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1093.

No. 94–5450. COLEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 37 and 251.

No. 94–5452. BIBBINS *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 21 F. 3d 13.

No. 94–5453. FOLLINS *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 1102.

No. 94–5454. HERRIMAN *v.* NAGLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 94–5456. LILLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–5458. MCCRARY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1047.

No. 94–5459. MCCOSTLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1125.

No. 94–5460. ROSSER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1125.

No. 94–5461. REID *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 28 F. 3d 114.

No. 94–5462. PADILLA-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–5464. AMSDEN *v.* PROFESSIONAL CONDUCT COMMITTEE, NEW HAMPSHIRE SUPREME COURT. Sup. Ct. N. H. Certiorari denied.

No. 94–5465. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5466. DEATON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 635 So. 2d 4.

No. 94–5468. TURNER *v.* UNIVERSITY HOUSING. C. A. 5th Cir. Certiorari denied. Reported below: 16 F. 3d 1214.

No. 94–5471. CAIN *v.* MISSOURI STATE BOARD OF PODIATRY MEDICINE. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 872 S. W. 2d 508.

No. 94–5472. VINESKI *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–5473. FERTEL-RUST *v.* CITY OF MILWAUKEE, WISCONSIN (two cases). C. A. 7th Cir. Certiorari denied.

No. 94–5474. KLANG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5477. GRAHAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 391.

No. 94–5479. HARMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 425.

No. 94–5481. BENSON *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 104.

No. 94–5482. ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 94–5483. BAUER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 94–5485. GLASS *v.* BOOTHBY. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 673.

No. 94–5487. GREY *v.* RUTT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–5488. HAYS *v.* KLAUSER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–5489. GARVEY *v.* SZABO, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 12 F. 3d 218.

No. 94–5490. GORLOV *v.* NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, HUMAN RESOURCES ADMINISTRATION (two cases). C. A. 2d Cir. Certiorari denied.

No. 94–5491. GUICHARD *v.* WISNIESKI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 236.

No. 94–5492. FLOYD *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–5493. JOHNSON *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 131.

No. 94–5494. GOOD *v.* NEW CASTLE YOUTH DEVELOPMENT CENTER. Sup. Ct. Pa. Certiorari denied.

No. 94–5495. JOHNSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–5496. KELLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 936.

No. 94–5497. GORDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1387.

No. 94–5498. RAE *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–5500. PAGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 102.

No. 94–5501. PIERVINANZI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 670.

No. 94–5502. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–5504. LOGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 429.

No. 94–5505. REES *v.* REYES. Ct. App. D. C. Certiorari denied.

No. 94–5506. PRUITT *v.* HANNIGAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5507. REID *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 537 Pa. 167, 642 A. 2d 453.

No. 94–5508. BRANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–5509. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5510. MACKALL *v.* THOMPSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 94–5511. ARMSTRONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 409.

No. 94–5515. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–5517. ELDEEB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 841.

No. 94–5518. KING *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–5519. T. H. *v.* T. H. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 255 Ill. App. 3d 247, 626 N. E. 2d 403.

No. 94–5520. DONOVAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 24 F. 3d 908.

No. 94–5521. TEMPLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1052.

No. 94–5523. KRUEGER *v.* SAIKI, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1285.

No. 94–5525. CICERO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1156.

No. 94–5526. SCALICE *v.* DAVIES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 249.

No. 94–5528. RAMOS BEAUCHAMP *v.* BOARD OF BAR EXAMINERS. Sup. Ct. P. R. Certiorari denied.

No. 94–5529. SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 252.

No. 94–5531. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 24 F. 3d 1230.

No. 94–5532. CLONTS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5533. VASHONE *v.* EMBRY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1123.

No. 94–5534. YOVEV *v.* KERN COUNTY SUPERIOR COURT ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5535. LEWIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 24 F. 3d 79.

No. 94–5536. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 1318.

No. 94–5537. MANESS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1006.

No. 94–5538. LIEDTKE *v.* STATE BAR OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 315.

No. 94–5539. RAZOR-BEY *v.* JABE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–5540. RILEY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–5541. LINDSAY *v.* MOZINGO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 237.

No. 94–5542. MEDINA *v.* QUAMME. C. A. 7th Cir. Certiorari denied.

No. 94–5543. LEONARD *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–5544. MARTIN *v.* INITIAL U. S. A. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 94–5546. ADAIR *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–5547. ADAMS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied.

No. 94–5548. BIGHOM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1098.

No. 94–5549. BAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 1278.

No. 94–5550. BECERRA-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 250.

No. 94–5552. DUNCAN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–5553. HUDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 433.

No. 94–5554. HUBBARD *v.* ROESCH. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 407.

No. 94–5556. HANNA, AKA WEECH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1438.

No. 94–5558. THODY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 978 F. 2d 625.

No. 94–5559. GARCIA TOVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1095.

No. 94–5561. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–5562. BRAGGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1047.

No. 94–5563. BROWN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 71 Wash. App. 1073.

No. 94–5564. CLYBURN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 24 F. 3d 613.

No. 94–5565. CARRIO *v.* HEMSTREE ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 94–5566. TAPIA-HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 570.

No. 94–5567. JAVIER VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 397.

No. 94–5568. WAINWRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1229.

No. 94–5569. COLEMAN *v.* PETERS, SUPERINTENDENT, WATERTOWN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 94–5570. PERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 409.

No. 94–5571. MCKNIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 17 F. 3d 1139.

No. 94–5572. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–5573. MANGINO *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1437.

No. 94–5575. CASAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1437.

No. 94–5576. CROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5582. EDWARDS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 445 Mich. 879, 519 N. W. 2d 886.

No. 94–5583. KRIEGH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–5584. GREEN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 94–5585. GARCIA *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 1487.

No. 94–5586. JACOBSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 94–5587. JOSE M. *v.* SAN DIEGO COUNTY DEPARTMENT OF SOCIAL SERVICES. Sup. Ct. Cal. Certiorari denied. Reported below: 7 Cal. 4th 295, 867 P. 2d 706.

No. 94–5589. CHOWDHURY *v.* SOUTHERN CALIFORNIA COACH ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 94–5591. BERCOVICI *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1092.

No. 94–5592. SIMMONS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 403.

No. 94–5593. BENNATT *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5595. FULLARD *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 98 Md. App. 738.

No. 94–5598. SNEAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 560.

No. 94–5604. REYNOLDS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 94–5605. OYLER *v.* ALLENBRAND ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 23 F. 3d 292.

No. 94–5612. HALE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 630 So. 2d 521.

No. 94–5613. LOWRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 24 F. 3d 641.

No. 94–5614. SHABAZZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 560.

No. 94–5616. SORENSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 252.

No. 94–5620. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–5621. GRIER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–5622. BRITTINGHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–5624. BLANC *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 24 F. 3d 1029.

No. 94–5625. BACA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 250.

No. 94–5628. GILBERT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5629. GOMEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 24 F. 3d 924.

No. 94–5631. DUSENBERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1048.

No. 94–5632. AGOFSKY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 866.

No. 94–5635. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 96.

No. 94–5638. BENEBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 237.

No. 94–5639. SCHNEIDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 572.

No. 94–5640. DEL HIERRO-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 238.

No. 94–5643. LIVSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–5645. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 444.

No. 94–5646. MERCIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5648. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5649. MADRIGAL-MACEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–5653. WALLACE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 F. 3d 84.

No. 94–5654. VELA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 24 F. 3d 924.

No. 94–5658. WILSON *v.* HAMES, COMMISSIONER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 252.

No. 94–5663. AVERY *v.* ROBERTSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–5666. GARZA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 330.

No. 94–5669. BAUER *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5670. HAYNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–5674. MACK *v.* STONE, SECRETARY OF THE ARMY. C. A. 2d Cir. Certiorari denied.

No. 94–5679. MORROW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 255.

No. 94–5680. ROBLEDO-GRIMALDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 236.

No. 94–5681. FLANAGAN ET UX. *v.* RESOLUTION TRUST CORPORATION ET AL. (two cases). C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 248 (first case) and 245 (second case).

No. 94–5682. GLEASON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 605.

No. 94–5687. BUSTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 238.

No. 94–5688. BURLESON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 93.

No. 94–5689. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–5690. ESTEVEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5695. NELSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 238.

No. 94–5698. MILWOOD *v.* MANN, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–5708. SCHOENBORN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1438.

No. 94–5710. VEGAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 773.

No. 94–5711. WITTMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 239.

No. 94–5715. VELASQUEZ CONTRERAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5717. HERNANDEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 31 F. 3d 354.

No. 94–5725. INGRAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 643 A. 2d 364.

No. 94–5726. BULLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 94–5727. BARO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 F. 3d 563.

No. 94–5728. DYKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1122.

No. 94–5729. BERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 94–5730. AZUOGU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–5731. VELEZ-MORALES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 738.

No. 94–5739. CAINE *v.* MILWAUKEE MACK SALES, INC. C. A. 7th Cir. Certiorari denied.

No. 94–5740. HOUSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 250.

No. 94–5741. GROSSMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 94–5742. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–5746. ORTIZ-MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 636.

No. 94–5748. PINEDA-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–5749. OKIYAMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–5750. MIMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1492.

No. 94–5752. LOVE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5753. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 565.

No. 94–5754. MATTHEWS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–5757. MOSELEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 94–5758. LONGORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1107.

No. 94–5759. MCCARTY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–5762. RINARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–5763. CARMICHAEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–5764. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 403.

No. 94–5765. KESSLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–5768. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 94–5772. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–5774. CAMPBELL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 38, 630 N. E. 2d 339.

No. 94–5783. CUNNINGHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5789. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 320.

No. 94–5790. NIEBLA-PACHECO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–5795. TOLEDO-YIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5802. HURTADO-OLIVERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 240.

No. 94–5824. MCINTYRE *v.* CROUCH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 402.

No. 93–1669. ARAVE, WARDEN *v.* FETTERLY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 997 F. 2d 1295.

No. 93–1824. PENNSYLVANIA *v.* TRAVIS. Super. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 428 Pa. Super. 621, 626 A. 2d 650.

No. 93–1844. CALIFORNIA *v.* PIMENTEL. Ct. App. Cal., 4th App. Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 93–1875. RISON ET AL. *v.* DEMJANJUK ET AL. C. A. 6th Cir. Motion of respondent John Demjanjuk for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 10 F. 3d 338.

No. 93–1898. FLORIDA *v.* SMITH. Dist. Ct. App. Fla., 5th Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 632 So. 2d 1086.

No. 93–2021. ALABAMA *v.* HANSBROUGH. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 11 F. 3d 143.

No. 94–43. HARPER ET AL. *v.* MUJAHID, AKA SMITH. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 19 F. 3d 28.

No. 93–1782. SWEENEY, INDIVIDUALLY AND AS TRUSTEE OF THE MAPLE LEAF TRUST AND OF THE CANADIAN REALTY TRUST, ET AL. *v.* RESOLUTION TRUST CORPORATION ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 F. 3d 1.

No. 93–1891. MACARIO, ADMINISTRATOR OF THE ESTATE OF MACARIO, DECEASED *v.* PRATT & WHITNEY CANADA, INC., ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 17 F. 3d 1430.

No. 93–1960. INTERNATIONAL TERMINAL CORP. *v.* M/T LOIRE ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 15 F. 3d 1079.

No. 93–2070. TEXAS EASTERN TRANSMISSION CORP. *v.* FIDELITY & CASUALTY INSURANCE COMPANY OF NEW YORK ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 15 F. 3d 1230 and 1249.

No. 93–2092. MANSON ET AL. *v.* STACESCU ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 11 F. 3d 1127.

No. 93–2099. EDWARDS *v.* FIRST AMERICAN TITLE INSURANCE CO. ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 19 F. 3d 1427.

No. 93–9012. GEORGACARAKOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 7 F. 3d 218.

No. 93–9099. SCOTT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 93–9137. DONOVAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 93–9322. GALLAGHER *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 F. 3d 401.

No. 93–9714. SABETTI *v.* DIPAOLO. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 F. 3d 16.

No. 93–9780. DUPONT *v.* DUBOISE, WARDEN, ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 94–39. STERN ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 23 F. 3d 746.

No. 94–58. GENERAL ELECTRIC CAPITAL CORP. ET AL. *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 18 F. 3d 323.

No. 94–94. WOODSON CONSTRUCTION CO. *v.* AMOCO PIPELINE CO. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 18 F. 3d 935.

No. 94–5122. ENO *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 F. 3d 401.

No. 93–1810. FRANCIS *v.* AMERICAN TELEPHONE & TELEGRAPH CO. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 16 F. 3d 409.

No. 93–1912. 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: 14 F. 3d 600.

No. 93–1987. KELLY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. *v.* SPRINT COMMUNICATIONS CO. ET AL.; and

No. 94–95. SPRINT COMMUNICATIONS CO. ET AL. *v.* KELLY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. Ct. App. D. C. Certiorari denied. JUSTICE O'CONNOR took no part in the consid-

eration or decision of these petitions. Reported below: 642 A. 2d 106.

No. 93–2052. ALBRECHT ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 93–9512. HANH LE *v.* E. I. DU PONT DE NEMOURS & CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 22 F. 3d 302.

No. 94–134. SAWTELL *v.* E. I. DU PONT DE NEMOURS & CO., INC. C. A. 10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 22 F. 3d 248.

No. 94–239. VOAKES *v.* AT&T COMMUNICATIONS, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 21 Cal. App. 4th 1673, 26 Cal. Rptr. 2d 802.

No. 93–1971. FITCH ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA (FIRST INTERSTATE BANK OF ARIZONA ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Motion of Chuck Walker et al. for leave to intervene denied. Certiorari denied.

No. 93–1993. WELLS FARGO & CO. ET AL. *v.* GREENWALD ET AL. C. A. 9th Cir. Motions of American Bankers Association and American Electronics Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 12 F. 3d 922.

No. 93–1995. ANR PIPELINE CO. ET AL. *v.* DIRECTOR OF PROPERTY VALUATION, KANSAS DEPARTMENT OF REVENUE. Sup. Ct. Kan. Motions of Committee on State Taxation, Interstate Natural Gas Association of America, and Western Resources, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 254 Kan. 534, 866 P. 2d 1060.

No. 93–2006. BANCA NAZIONALE DEL LAVORO *v.* SMS HASENCLEVER GMBH. Ct. App. Ga. Motion of U. S. Council on International Banking, Inc., et al. for leave to file a brief as *amici*

curiae granted. Certiorari denied. Reported below: 211 Ga. App. 360, 439 S. E. 2d 502.

No. 93–2014. FoxMeyer Drug Co. *v.* Coopers & Lybrand. C. A. 3d Cir. Petition for writ of certiorari and/or mandamus denied.

No. 93–2067. White et al. *v.* Illinois. Sup. Ct. Ill. Motion of petitioners to strike portions of the brief in opposition denied. Certiorari denied. Reported below: 158 Ill. 2d 432, 634 N. E. 2d 733.

No. 93–2096. Bonser *v.* Town of Nottingham, New Hampshire. Sup. Ct. N. H. Motion of Terry L. Bonser and Mary L. Parks for substitution as petitioners in place of Robert A. Bonser, deceased, granted. Certiorari denied.

No. 93–2097. Bonser *v.* Town of Nottingham, New Hampshire. Sup. Ct. N. H. Motion of Terry L. Bonser and Mary L. Parks for substitution as petitioners in place of Robert A. Bonser, deceased, granted. Certiorari denied.

No. 93–9035. Quiban *v.* Department of Veterans Affairs. C. A. D. C. Cir. Motion of Gilbert M. Mendoza for substitution in his capacity as personal representative of Felomina Quiban, deceased, granted. Certiorari denied. Reported below: 928 F. 2d 1154.

No. 93–9153. Ana G. *v.* Orange County Social Services Agency. Ct. App. Cal., 4th App. Dist. Motion of California Public Defenders Association for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 93–9261. Lewis *v.* Sharp et al. C. A. 8th Cir. Motion of petitioner to strike brief in opposition denied. Certiorari denied. Reported below: 22 F. 3d 306.

No. 93–9319. Chaklos *v.* Department of the Army. C. A. Fed. Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 968 F. 2d 1226.

No. 94–20. Pacific Northwest Venison Producers et al. *v.* Smitch, Director of Washington Department of Wildlife, et al. C. A. 9th Cir. Motion of North American Elk

Breeders Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 20 F. 3d 1008.

No. 94–68. RHODE ISLAND ET AL. *v.* NARRAGANSETT INDIAN TRIBE ET AL. C. A. 1st Cir. Motion of Claiborne Pell et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 19 F. 3d 685.

No. 94–87. ETHICON, INC. *v.* EISENMENGER, AN INCAPACITATED PERSON, BY EISENMENGER, HER GUARDIAN AND CONSERVATOR. Sup. Ct. Mont. Motion of American Cyanamid Co. 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: 264 Mont. 393, 871 P. 2d 1313.

No. 94–97. TAYLOR, WARDEN *v.* EVANS-SMITH. C. A. 4th Cir. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 19 F. 3d 899.

No. 94–123. ADVANCE SECURITY, INC., ET AL. *v.* MULHALL. C. A. 11th Cir. Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 19 F. 3d 586.

No. 94–281. W. R. GRACE & COMPANY-CONN. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. C. A. 7th Cir. Motion of respondent for award of damages denied. Certiorari denied. Reported below: 24 F. 3d 955.

No. 94–5048. VERNON *v.* BENSON, WARDEN, ET AL.; and
No. 94–5146. BRELAND *v.* BENSON, WARDEN, ET AL. Sup. Ct. Minn. Motions of Minnesota for leave to intervene denied. Certiorari denied.

No. 94–5125. MILTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 8 F. 3d 39.

No. 94–5254. MCGEE *v.* BLOCK. Ct. App. Cal., 2d App. Dist. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 94–5478. HANNA *v.* WASHINGTON. Sup. Ct. Wash. Motion of Washington Association of Criminal Defense Lawyers for

leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 123 Wash. 2d 704, 871 P. 2d 135.

No. 94–5527 (A–125). TOEGEMANN *v.* RHODE ISLAND. C. A. 1st Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied. Certiorari denied.

No. 94–5580. GERMANY *v.* WILSON ET AL. C. A. 4th Cir. Motion of respondents for sanctions denied. Certiorari denied. Reported below: 27 F. 3d 563.

Rehearing Denied

No. 93–8257. ALLEN *v.* ILLINOIS, 511 U. S. 1075;

No. 93–8427. JONES *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, 512 U. S. 1239; and

No. 93–8516. PARRIS *v.* UNITED STATES, 511 U. S. 1144. Petitions for rehearing denied.

No. 93–8426. HARPER *v.* INTERIOR BOARD OF LAND APPEALS, 512 U. S. 1239; and

No. 93–9298. DAMATTA-OLIVERA *v.* UNITED STATES, 512 U. S. 1244. Motions for leave to file petitions for rehearing denied.

OCTOBER 4, 1994

Dismissal Under Rule 46

No. 93–9777. GEARY *v.* NEVADA. Sup. Ct. Nev. Certiorari dismissed under this Court's Rule 46.1. Reported below: 110 Nev. 261, 871 P. 2d 927.

OCTOBER 7, 1994

Certiorari Granted

No. 93–1408. NEW YORK STATE CONFERENCE OF BLUE CROSS & BLUE SHIELD PLANS ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.;

No. 93–1414. CUOMO, GOVERNOR OF NEW YORK, ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.; and

No. 93–1415. HOSPITAL ASSOCIATION OF NEW YORK STATE *v.* TRAVELERS INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari in Nos. 93–1408 and 93–1414 granted. Certiorari in No. 93–1415 granted limited to Question 1 presented by the petition. 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., Wednesday, November 16, 1994. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. This Court's Rule 29.2 does not apply. Reported below: 14 F. 3d 708.

No. 93–1911. SANDIN, UNIT TEAM MANAGER, HALAWA CORRECTIONAL FACILITY *v.* CONNER ET AL. C. A. 9th 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., Wednesday, November 16, 1994. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. This Court's Rule 29.2 does not apply. Reported below: 15 F. 3d 1463.

No. 94–3. REYNOLDSVILLE CASKET CO. ET AL. *v.* HYDE. Sup. Ct. Ohio. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, November 16, 1994. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. This Court's Rule 29.2 does not apply. Reported below: 68 Ohio St. 3d 240, 626 N. E. 2d 75.

No. 94–18. MASTROBUONO ET AL. *v.* SHEARSON LEHMAN HUTTON, INC., ET AL. 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., Wednesday, November 16, 1994. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. This Court's Rule 29.2 does not apply. Reported below: 20 F. 3d 713.

No. 94–197. ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* GREEN ET AL. C. A. 9th 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, November 16, 1994. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. This Court's Rule 29.2 does not apply. Reported below: 26 F. 3d 95.

No. 94–286. FREIGHTLINER CORP. ET AL. *v.* MYRICK ET AL. C. A. 11th Cir. Motions of American Trucking Associations, Inc., and Truck Trailer Manufacturers Association for leave to file briefs as *amici curiae* granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, November 16, 1994. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. This Court's Rule 29.2 does not apply. Reported below: 13 F. 3d 1516.

OCTOBER 11, 1994

Certiorari Granted—Vacated and Remanded

No. 93–9597. STENNETT *v.* TEXAS. Ct. App. Tex., 14th Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767 (1994).

No. 93–9673. GIBBS *v.* FRANKLIN ET AL. 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 *Farmer* v. *Brennan*, 511 U. S. 825 (1994). Reported below: 18 F. 3d 521.

No. 94–5183. MICKENS *v.* VIRGINIA. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Simmons* v. *South Carolina*, 512 U. S. 154 (1994). Reported below: 247 Va. 395, 442 S. E. 2d 678.

Certiorari Dismissed

No. 93–8709. OWEN *v.* NEBRASKA (two cases). Ct. App. Neb. Certiorari dismissed for want of jurisdiction. Reported below: 4 Neb. App. 382, 510 N. W. 2d 503 (first case); 2 Neb. App. 195, 508 N. W. 2d 299 (second case).

Miscellaneous Orders. (See also No. 93–9220, *ante,* p. 1.)

No. ——–——. CHAPMAN *v.* BRYAN ET AL.; and
No. ——–——. SIGLER *v.* TWYFORD ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–1417. IN RE DISBARMENT OF ASBELL. Disbarment entered. [For earlier order herein, see 512 U. S. 1267.]

No. D–1419. IN RE DISBARMENT OF LASHLEY. Douglas L. Lashley, of Olney, Md., 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 practice before the Bar of this Court. The rule to show cause, heretofore issued on August 2, 1994 [512 U. S. 1267], is hereby discharged.

No. D–1421. IN RE DISBARMENT OF SLAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1267.]

No. D–1431. IN RE DISBARMENT OF SCHMIEDER. Disbarment entered. [For earlier order herein, see 512 U. S. 1269.]

No. D–1461. IN RE DISBARMENT OF WEINFELD. It is ordered that David Michael Weinfeld, of Meadowbrook, Pa., be suspended from the practice of law in this Court and that a rule 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–1462. IN RE DISBARMENT OF O'KEEFE. It is ordered that Michael Phillip O'Keefe, of Overland Park, Kan., be suspended from the practice of law in this Court and that a rule 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. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Third Interim Report of the Special Master on Motions to Amend Pleadings received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Reply

briefs, if any, may be filed by the parties within 30 days. [For earlier order herein, see, *e. g.,* 511 U. S. 1066.]

No. 120, Orig. NEW JERSEY *v.* NEW YORK. It is ordered that Paul Verkuil, Esq., of Heathrow, Fla., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic and clerical assistants, the cost of printing his report, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier order herein, see, *e. g.,* 511 U. S. 1080.]

No. 93–1121. PLAUT ET AL. *v.* SPENDTHRIFT FARM, INC., ET AL. C. A. 6th Cir. [Certiorari granted, 511 U. S. 1141.] Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 93–1462. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. *v.* RAMON MORALES. C. A. 9th Cir. [Certiorari granted, 512 U. S. 1287.] Motion of respondent for appointment of counsel granted, and it is ordered that James R. Asperger, Esq., of Los Angeles, Cal., be appointed to serve as counsel for respondent in this case.

No. 93–1543. MCKENNON *v.* NASHVILLE BANNER PUBLISHING CO. C. A. 6th Cir. [Certiorari granted, 511 U. S. 1106.] Motions of Equal Employment Advisory Council and Chamber of Commerce of the United States of America for leave to file briefs as *amici curiae* granted.

No. 93–1677. OKLAHOMA TAX COMMISSION *v.* JEFFERSON LINES, INC. C. A. 8th Cir. [Certiorari granted, 512 U. S. 1204.] Motion of Greyhound Lines, Inc., for leave to file a brief as *amicus curiae* granted.

No. 93–9082. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE CO. ET AL. C. A. 3d Cir.;

No. 93–9444. IN RE GAYDOS;

No. 93–9577. GAYDOS *v.* CHERTOFF, FORMER UNITED STATES ATTORNEY, ET AL. C. A. 3d Cir.;

No. 93–9618. IN RE GAYDOS;

No. 94–5018. IN RE GAYDOS; and

No. 94–5070. IN RE GAYDOS. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 1, 1994, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–294. IN RE DUNKIN ET AL. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 93–1341. WEST PENN POWER CO. ET AL. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 535 Pa. 108, 634 A. 2d 207.

No. 93–1535. WEST PENN POWER CO. ET AL. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 150 Pa. Commw. 349, 615 A. 2d 951.

No. 93–1687. TEXAS *v.* BRADFORD. Ct. Crim. App. Tex. Certiorari denied. Reported below: 873 S. W. 2d 15.

No. 93–1758. GIDDENS *v.* SHELL OIL CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 208.

No. 93–1975. KING *v.* BROWN, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 1403.

No. 93–2013. CITY OF SAN DIEGO *v.* PAULSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1518.

No. 93–2030. DURDEN, ADMINISTRATRIX OF THE ESTATE OF FREEMAN, DECEASED *v.* DEKALB COUNTY, GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 34, 440 S. E. 2d 170.

No. 93–2042. MICHIGAN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 18 F. 3d 348.

No. 93–2053. ENPLANAR, INC., ET AL. *v.* WEST, SECRETARY OF THE ARMY, ET AL.; and TURNER, TRUSTEE OF V. KEELER & CO., INC. *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 11 F. 3d 1284 (first case); 25 F. 3d 1043 (second case).

No. 93–8780. HYDER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 633 So. 2d 128.

No. 93–8906. MURPHY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–8978. BURNETT *v.* REASONER. C. A. 8th Cir. Certiorari denied.

No. 93–9116. HRBEK *v.* HUNDLEY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 777.

No. 93–9267. NESBY *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 602.

No. 93–9431. BOWSER *v.* BOGGS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 20 F. 3d 1060.

No. 93–9441. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 F. 3d 1070.

No. 93–9464. HEISER *v.* STEPANIK, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied. Reported below: 15 F. 3d 299.

No. 93–9483. ANGEL FLORES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 871 S. W. 2d 714.

No. 93–9488. HYDER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 636 So. 2d 715.

No. 93–9528. TERRELL *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 17 F. 3d 1444.

No. 93–9548. HERRICK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1437.

No. 93–9575. HENDERSON *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 13 F. 3d 1073.

No. 93–9630. CONNER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 632 So. 2d 1239.

No. 93–9749. CULLUM *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–9781. LIBBY *v.* DUVAL, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT CEDAR JUNCTION. C. A. 1st Cir. Certiorari denied. Reported below: 19 F. 3d 733.

No. 94–7. WEST PENN POWER CO. ET AL. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 157 Pa. Commw. 150, 629 A. 2d 221.

No. 94–13. KANSAS DEPARTMENT OF CORRECTIONS *v.* BRINKMAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 370.

No. 94–56. MITCHELL ET AL. *v.* STATE FARM FIRE & CASUALTY CO.; and

No. 94–290. STATE FARM FIRE & CASUALTY CO. *v.* MITCHELL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 15 F. 3d 959.

No. 94–64. CHESAPEAKE BAY FOUNDATION, INC. *v.* DEPARTMENT OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. Reported below: 11 F. 3d 211.

No. 94–84. RAMONA CONVENT OF THE HOLY NAMES *v.* CITY OF ALHAMBRA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 10, 26 Cal. Rptr. 2d 140.

No. 94–86. BELL ET AL. *v.* CITY OF MIAMI. Sup. Ct. Fla. Certiorari denied. Reported below: 634 So. 2d 163.

No. 94–98. SOUTHERN OHIO COAL CO. *v.* OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 20 F. 3d 1418.

No. 94–102. BORDEN, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 502.

No. 94–105. AMATO *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1281.

No. 94–106. BECTON DICKINSON & CO. *v.* UNITED STATES EX REL. SILLER. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 1339.

No. 94–109. NAEGELE OUTDOOR ADVERTISING, INC. *v.* CITY OF DURHAM. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 11.

No. 94–113. IVIMEY *v.* VARIABLE ANNUITY LIFE INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–115. HAMPSHIRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1096.

No. 94–136. SCOTT ET AL. *v.* KRISSMAN ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–139. GENERAL MOTORS CORP. *v.* JACKSON, INDIVIDUALLY AND AS NEXT FRIEND AND NATURAL GUARDIAN OF HER MINOR DAUGHTER, JACKSON, ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 636 So. 2d 310.

No. 94–149. RESOLUTION TRUST CORPORATION, AS RECEIVER FOR MID KANSAS SAVINGS & LOAN ASSN. ET AL. *v.* HOMELAND STORES, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 17 F. 3d 1269.

No. 94–182. BOOSTROM *v.* BACH. Sup. Ct. Ind. Certiorari denied. Reported below: 622 N. E. 2d 175.

No. 94–202. LYNDS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 102, 630 N. E. 2d 679.

No. 94–211. MUSSLEWHITE ET AL. *v.* READING & BATES PETROLEUM CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1094.

No. 94–221. DOWNER *v.* HANNEMAN ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 110 Nev. 167, 871 P. 2d 279.

No. 94–223. PENNSYLVANIA PUBLIC UTILITY COMMISSION *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 558.

No. 94–234. COLUMBUS, GEORGIA *v.* KNIGHT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 579.

No. 94–237. TRUMBLY ET UX. *v.* LAWLER, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF LAWLER, DECEASED, ET AL. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 94–238. SISTERS OF THE HOLY FAMILY OF NAZARETH *v.* CITY OF GRAND PRAIRIE. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 868 S. W. 2d 835.

No. 94–240. WEISSBRODT *v.* WHITE MOUNTAIN APACHE TRIBE OF ARIZONA ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 31 F. 3d 1176.

No. 94–241. OLIVER ET AL. *v.* LEWIS. Ct. App. Ariz. Certiorari denied. Reported below: 178 Ariz. 330, 873 P. 2d 668.

No. 94–242. EGAN *v.* WELLS FARGO ALARM SERVICES, AKA BAKER PROTECTIVE SERVICES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 1444.

No. 94–244. REHABILITATION SPECIALISTS, INC. *v.* SAFECO INSURANCE COMPANY OF AMERICA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 94–260. SCHEIB ET AL. *v.* GRANT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 149.

No. 94–261. HILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 984.

No. 94–274. KING ET AL. *v.* JACKSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1573.

No. 94–277. GREENWOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 22 F. 3d 783.

No. 94–279. HUCKABY *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 94–282. YOUNG *v.* NORTHERN ILLINOIS CONFERENCE OF UNITED METHODIST CHURCH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 184.

No. 94–283. BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL. *v.* KANSAS CITY SOUTHERN RAILWAY CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 787.

No. 94–287. GILLILAN *v.* TECCOR ELECTRONICS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 469.

No. 94–289. WRIGHT ET AL. *v.* AMF CORP. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–291. FREELAND ET AL. *v.* HARLEY-DAVIDSON, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 301.

No. 94–292. PITTSBURG STATE UNIVERSITY *v.* HURD. C. A. 10th Cir. Certiorari denied. Reported below: 29 F. 3d 564.

No. 94–293. BAILEY *v.* FLORIDA. Cir. Ct. Fla., Alachua County. Certiorari denied.

No. 94–297. PURICELLI *v.* MORRISVILLE BOROUGH, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 123.

No. 94–298. PORTER *v.* UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 94–302. WILSON *v.* BELIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 644.

No. 94–304. VILLAGE OF OCONOMOWOC LAKE *v.* DAYTON HUDSON CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 24 F. 3d 962.

No. 94–308. LOUISIANA *v.* CORLEY. Sup. Ct. La. Certiorari denied. Reported below: 633 So. 2d 151.

No. 94–309. LAMB ET AL. *v.* VILLAGE OF QUINCY. Ct. App. Ohio, Logan County. Certiorari denied. Reported below: 92 Ohio App. 3d 592, 636 N. E. 2d 412.

No. 94–310. LEKVOLD *v.* WESTINGHOUSE HANFORD CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 131.

No. 94–313. AUTO CLUB INSURANCE ASSN. *v.* WHITE & WHITE, INC. Ct. App. Mich. Certiorari denied.

No. 94–316. BUENO *v.* CITY OF HUNTINGTON PARK. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–319. LONG DISTANCE SERVICES, INC., AKA LONG DISTANCE SERVICE OF WASHINGTON, INC., ET AL. *v.* MID ATLANTIC TELECOM, INC. C. A. 4th Cir. Certiorari denied. Reported below: 18 F. 3d 260.

No. 94–321. KOZELKA *v.* WEIDER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 398.

No. 94–323. LEPARDO, DBA AFL DISPOSAL CO., INC. *v.* BOARD OF HEALTH AND HOSPITALS OF BOSTON ET AL. App. Ct. Mass. Certiorari denied. Reported below: 36 Mass. App. 1114, 634 N. E. 2d 154.

No. 94–324. MOUNT ET AL. *v.* EL DORADO COUNTY SUPERIOR COURT (STATE FARM FIRE & CASUALTY CO., REAL PARTY IN INTEREST). Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–338. EMERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 880 S. W. 2d 759.

No. 94–340. HURLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1174.

No. 94–344. COPE ET AL. *v.* KENTUCKY REVENUE CABINET. Sup. Ct. Ky. Certiorari denied. Reported below: 875 S. W. 2d 87.

No. 94–349. BURDICK *v.* NEW HAMPSHIRE SUPREME COURT, COMMITTEE ON CHARACTER AND FITNESS. Sup. Ct. N. H. Certiorari denied.

No. 94–350. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 94–353. FINIZIE *v.* CITY OF BRIDGEPORT. App. Ct. Conn. Certiorari denied.

No. 94–356. KELLY *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 235.

No. 94–363. GRABLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 53.

No. 94–373. WEBER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 140.

No. 94–375. CITY OF CABOOL ET AL. *v.* CASEY. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 799.

No. 94–383. STATON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–384. BERKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1095.

No. 94–387. HAKEL *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 870 P. 2d 1224.

No. 94–397. BRADFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 94–403. PATTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1095.

No. 94–406. TALLEY *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 214.

No. 94–412. ACOSTA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–417. MORRIS *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 465.

No. 94–425. SOLOMON *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 396.

No. 94–435. AMUSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 21 F. 3d 1251.

No. 94–472. PION *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 25 F. 3d 18.

No. 94–474. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1489.

No. 94–496. WACHS ET AL. *v.* TREVINO, A MINOR, BY AND THROUGH HER NEXT FRIEND, HER GRANDMOTHER, CRUZ. C. A. 9th Cir. Certiorari denied. Reported below: 23 F. 3d 1480.

No. 94–5038. STEARMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1170.

No. 94–5044. ALTAMIRANO-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1090.

No. 94–5055. KINDLER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 536 Pa. 228, 639 A. 2d 1.

No. 94–5090. NUNNEMAKER *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1115.

No. 94–5099. ARDOIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 177.

No. 94–5139. HURLEY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 876 S. W. 2d 57.

No. 94–5206. DAVIS *v.* GREER, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 13 F. 3d 1134.

No. 94–5208. SCOTT *v.* UNITED STATES;
No. 94–5277. RODRIGUEZ *v.* UNITED STATES;
No. 94–5326. SELLERS *v.* UNITED STATES;
No. 94–5341. DENSON *v.* UNITED STATES; and
No. 94–5360. GASTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–5216. ATKINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1173.

No. 94–5220. BONNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 14.

No. 94–5281. RICHMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–5316. SLANCO *v.* EASTWOOD MALL, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 68 Ohio St. 3d 221, 626 N. E. 2d 59.

No. 94–5337. SCOTT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5338. CLEMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1047.

No. 94–5370. WESTMORELAND ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 62.

No. 94–5440. WHEELOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–5512. BAKER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 F. 3d 1374.

No. 94–5514. GALLEGOS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 178 Ariz. 1, 870 P. 2d 1097.

No. 94–5574. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5577. COLINA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 634 So. 2d 1077.

No. 94–5594. HAZIME *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 17 F. 3d 136.

No. 94–5596. EALEY *v.* ARMONTROUT, ASSISTANT DIRECTOR/ZONE II, MISSOURI DIVISION OF ADULT INSTITUTIONS. C. A. 8th Cir. Certiorari denied.

No. 94–5597. FIELDS *v.* CITY OF WEST PALM BEACH, FLORIDA, ET AL. (three cases). Sup. Ct. Fla. Certiorari denied. Reported below: 634 So. 2d 623 (first and third cases); 632 So. 2d 1026 (second case).

No. 94–5606. ANDERSON *v.* BUTLER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 3d 593.

No. 94–5607. WOODS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 641 So. 2d 316.

No. 94–5609. WERNER *v.* BERGEN COUNTY JAIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 125.

No. 94–5611. TYSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 94–5617. EAST *v.* COFFEL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 245.

No. 94–5618. FLOYD *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 125 Idaho 651, 873 P. 2d 905.

No. 94–5626. JOHNSON *v.* DUTTON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–5627. HEAD *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 129.

No. 94–5636. BRAXTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1385.

No. 94–5637. ABAD *v.* ZAVARAS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1055.

No. 94–5641. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 238.

No. 94–5644. MCINTOSH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 1454.

No. 94–5655. WELLS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 94–5656. BANKS *v.* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5660. JAMES *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 20.

No. 94–5661. GREENLAW *v.* SMITH. Sup. Ct. Wash. Certiorari denied. Reported below: 123 Wash. 2d 593, 869 P. 2d 1024.

No. 94–5662. HEAD *v.* HARRIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 129.

No. 94–5664. WATSON *v.* STINE. C. A. 6th Cir. Certiorari denied.

No. 94–5668. DAVIS *v.* ODA. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 94–5671. FORSYTH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 94–5672. FROST *v.* LUTZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 246.

No. 94–5675. MOORE *v.* EMC MORTGAGE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 566.

No. 94–5676. RUFF *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 402.

No. 94–5677. PUGH *v.* BUTTERWORTH ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–5683. FAUNCE *v.* MCCARTHY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 130.

No. 94–5684. GREER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 424 Pa. Super. 645, 617 A. 2d 389.

No. 94–5686. COUSINO *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 94–5691. JACKSON *v.* PFLUM ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–5692. GILMORE *v.* LOCAL 295, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 396.

No. 94–5693. ANSARI *v.* PLUMMER. C. A. 9th Cir. Certiorari denied.

No. 94–5694. BENAVIDES *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 94–5696. RINEHART *v.* NIX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 127.

No. 94–5697. PERRI *v.* BEYER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5699. OGDEN *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 118 N. M. 234, 880 P. 2d 845.

No. 94–5700. LOVE *v.* WHEELER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 237.

No. 94–5701. ROBINSON ET AL. *v.* BARTLEY. Ct. App. D. C. Certiorari denied.

No. 94–5702. MILLER *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 466.

No. 94–5703. LUNA *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1490, 635 N. E. 2d 45.

No. 94–5704. RIVAS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 468.

No. 94–5705. MACNAB *v.* BOARD OF PAROLE. Ct. App. Ore. Certiorari denied.

No. 94–5706. MENDEZ *v.* SAN DIEGO COUNTY DEPARTMENT OF SOCIAL SERVICES. Sup. Ct. Cal. Certiorari denied. Reported below: 7 Cal. 4th 295, 867 P. 2d 706.

No. 94–5712. TWIGGS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION (AND DIAGNOSTIC AND CLASSIFICATION CENTER), GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–5713. MCGUIRE *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 139.

No. 94–5716. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1098.

No. 94–5718. BUTLER *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES. Ct. App. D. C. Certiorari denied.

No. 94–5719. TARDY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5721. CORDOVA *v.* COOPER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1056.

No. 94–5722. KING *v.* MURPHY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–5723. YOUNG, AKA GILKEY *v.* MANNION, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL. Sup. Ct. Ill. Certiorari denied.

No. 94–5724. ALEXANDER *v.* CORMIER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1043.

No. 94–5733. CATES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 94–5736. THORPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–5761. LOPEZ-YANEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–5767. CHANDLER *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 94–5770. BESSMAN *v.* WSOS COMMUNITY ACTION COMMISSION, INC. Ct. App. Ohio, Sandusky County. Certiorari denied.

No. 94–5775. ALI *v.* MCDADE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1208.

No. 94–5776. SPEIGHT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 24 F. 3d 1464.

No. 94–5778. AZIZ *v.* PERKINS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 126.

No. 94–5781. MATTHEWS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5786. YAO KUANG SAETEURN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 110.

No. 94–5794. DIAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 24 F. 3d 242.

No. 94–5797. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5801. FOLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 408.

No. 94–5810. HEAD *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 556.

No. 94–5813. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 563.

No. 94–5816. CARDONA-USQUIANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 25 F. 3d 1194.

No. 94–5819. WATSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–5820. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–5821. DURANSEAU *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 804.

No. 94–5825. NICKLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–5826. FLORES MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 109.

No. 94–5827. OWENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 53.

No. 94–5833. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 115.

No. 94–5835. MCADAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 370.

No. 94–5847. BRUMFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 133.

No. 94–5849. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 568.

No. 94–5851. KELLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 28 F. 3d 114.

No. 94–5854. GRAYER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1043.

No. 94–5857. FRIENDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 417.

No. 94–5863. BROWN *v.* CITY OF ST. PETERSBURG ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 36.

No. 94–5864. COLE *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 622 N. E. 2d 245.

No. 94–5874. COVARRUBIAS LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 3d 397.

No. 94–5877. GASKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1489.

No. 94–5879. ASHWORTH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 94–5883. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 327.

No. 94–5884. MINICONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 26 F. 3d 297.

No. 94–5890. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–5893. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 26 F. 3d 669.

No. 94–5896. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–5900. IOVINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1060.

No. 94–5901. HARRIS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 39 M. J. 376.

No. 94–5902. GRAHAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5904. ACEVEDO *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 620.

No. 94–5906. CRAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1043.

No. 94–5908. BARRERA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 624.

No. 94–5909. RAMIREZ GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–5911. KING *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5918. STOCKSTILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 F. 3d 492.

No. 94–5920. ANDREWS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1328.

No. 94–5921. BARNETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 127.

No. 94–5922. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–5924. COUCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5926. DALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1060.

No. 94–5927. CARADINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1050.

No. 94–5929. SANCHEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 1002.

No. 94–5931. WOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 117.

No. 94–5934. LONDONO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–5936. MCATEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 134.

No. 94–5937. PEDRAZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 27 F. 3d 1515.

No. 94–5938. NARVAEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–5939. PICKENS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1059.

No. 94–5942. TOWNSEND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 215.

No. 94–5953. ASHLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 26 F. 3d 1008.

No. 94–5958. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–5960. HALLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–5971. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 29 F. 3d 619.

No. 94–5972. OSBORNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 255.

No. 94–5973. CURRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 126.

No. 94–5975. CABALLERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–5978. RISELAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 409.

No. 94–5979. LOPEZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–5988. AGUILAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–5991. DEFRANCO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 664.

No. 94–5993. RANDOLPH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–5994. MATHIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–5995. ZAJAC *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 26 F. 3d 636.

No. 94–6017. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1212.

No. 94–6027. HICKEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 48.

No. 94–6031. HADLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–144. COMBINED MANAGEMENT, INC. *v.* ATCHINSON, SUPERINTENDENT, BUREAU OF INSURANCE OF MAINE. C. A. 1st Cir. Motion of International Association of Entrepreneurs of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 22 F. 3d 1.

No. 94–255. COLLINS ET AL. *v.* GREENE COUNTY MEMORIAL HOSPITAL ET AL. Sup. Ct. Pa. Motion of respondent Greene County Memorial Hospital for damages, costs, and attorney's fees denied. Certiorari denied. Reported below: 536 Pa. 475, 640 A. 2d 379.

No. 94–258. HOME SAVINGS OF AMERICA, FSB *v.* MAYNARD. Ct. App. Cal., 2d App. Dist. Motion of Texas Savings et al. for leave to file a brief as *amici curiae* granted. Certiorari denied.

No. 94–264. AIMABLE ET AL. *v.* LONG & SCOTT FARMS, INC. C. A. 11th Cir. Motion of United Farm Workers of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 20 F. 3d 434.

No. 94–271. FLORIDA *v.* HOLLAND. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 636 So. 2d 1289.

No. 94–314. UNDERWAGER ET AL. *v.* SALTER ET AL. C. A. 7th Cir. Motions of National Association of State VOCAL Organizations and National Congress for Men and Children, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 22 F. 3d 730.

No. 94–385. EXXON CORP. ET AL. *v.* EYAK NATIVE VILLAGE ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 25 F. 3d 773.

No. 94–422. RUTLEDGE *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner to supplement petition for writ of certiorari denied. Certiorari denied. Reported below: 19 F. 3d 1445.

No. 94–5633. CHATIMA *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner to consolidate this petition with No. 93–8962, *Chukwura* v. *United States*, denied. Certiorari denied.

Rehearing Denied

No. 93–6812. POWELL *v.* RICE, SECRETARY OF THE AIR FORCE, 510 U. S. 1179. Petition for rehearing denied.

OCTOBER 14, 1994

Dismissal Under Rule 46

No. 94–295. UNITED STATES *v.* WILLIAMS. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.

OCTOBER 17, 1994

Miscellaneous Orders

No. ——. GEOFFREY DEVELOPMENT CO. *v.* CITY OF ALPHARETTA; and

No. ——. GADSON *v.* ABDUL-WASI ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A–267 (94–6456). RUSSELL *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, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. 94–66. MOORE ET AL. *v.* DUPREE ET AL.; and

No. 94–82. LAMAR COUNTY BOARD OF EDUCATION AND TRUSTEES ET AL. *v.* DUPREE ET AL. Appeals from D. C. S. D. Miss. The Solicitor General is invited to file a brief in these cases expressing the views of the United States addressing the following issue: "In light of the Mississippi Supreme Court's holding in *Greenville Public School Dist.* v. *Western Line Consol. School Dist.*, 575 So. 2d 956 (1990), that Miss. Code Ann. § 37–7–103 (1990) supersedes Miss. Code Ann. § 37–7–611 (1972) and repeals it by implication, what remedy, if any, can a federal

court offer for failure to preclear § 47 of the Uniform School Law, 1986 Miss. Gen. Laws, ch. 492, which also purported to repeal § 37–7–611?"

No. 94–5743. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. C. A. 3d Cir.; and

No. 94–5860. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. (two cases). C. A. 3d Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 7, 1994, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–5766. FERTEL-RUST *v.* MILWAUKEE POLICE DEPARTMENT ET AL. C. A. 7th Cir.; and

No. 94–5950. BURKE *v.* KELLY ET AL. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 7, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

Certiorari Granted

No. 94–325. CHANDRIS, INC., ET AL. *v.* LATSIS. C. A. 2d Cir. Certiorari granted. Reported below: 20 F. 3d 45.

No. 94–251. UNITED STATES *v.* ROBERTSON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 15 F. 3d 862.

Certiorari Denied

No. 93–1920. MCDANIEL ET AL. *v.* TELLIS. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 1314.

No. 93–2018. KANSAS ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 16 F. 3d 436.

No. 93–9130. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 212.

No. 93–9345. THIGPEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 31.

No. 93–9652. FLIEGER *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 878.

No. 93–9720. JACOBS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–9729. TAGALA *v.* PREWITT, COMMISSIONER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 29.

No. 94–81. GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS & AUTOMOTIVE EMPLOYEES OF CONTRA COSTA COUNTY, LOCAL NO. 315 *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 20 F. 3d 1017.

No. 94–135. ITT COMMERCIAL FINANCE CORP. ET AL. *v.* GAWORSKI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 17 F. 3d 1104.

No. 94–141. TERRY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 575.

No. 94–160. REILLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 629.

No. 94–168. SPRAGUE *v.* KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 185.

No. 94–183. LEGG *v.* SMITH, TRUSTEE. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 650.

No. 94–204. CHISUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 26.

No. 94–273. MAYES *v.* SANFORD. Ct. App. D. C. Certiorari denied. Reported below: 641 A. 2d 855.

No. 94–311. FOSTER WHEELER CORP. *v.* LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO; and

No. 94–312. FOSTER WHEELER ENERGY CORP. *v.* LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 375.

No. 94–322. STUART, GUARDIAN AD LITEM FOR STUART, AND ADMINISTRATOR OF THE ESTATE OF STUART, DECEASED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 23 F. 3d 1483.

No. 94–328. CALIFORNIA DEPARTMENT OF CORRECTIONS *v.* BLAND. C. A. 9th Cir. Certiorari denied. Reported below: 20 F. 3d 1469.

No. 94–332. VERMILION PARISH BUS DRIVERS & OPERATORS ASSN. ET AL. *v.* VERMILION PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–333. CSX TRANSPORTATION, INC. *v.* ADKINS ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 203, 442 S. E. 2d 737.

No. 94–336. SMITH *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 15 F. 3d 1160.

No. 94–337. PUDLO *v.* SHEAHAN, SHERIFF, COOK COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 94–339. GENERAL ENVIRONMENTAL SCIENCE CORP. *v.* HORSFALL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1048.

No. 94–341. TOUCHE ROSS & CO. *v.* CONGREGATION OF PASSION, HOLY CROSS PROVINCE. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 137, 636 N. E. 2d 503.

No. 94–343. THANH VONG HOAI *v.* SUN REFINING & MARKETING CO., INC. C. A. D. C. Cir. Certiorari denied. Reported below: 18 F. 3d 953.

No. 94–347. MORISSETTE ET AL. *v.* YU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1114.

No. 94–348. ALLEN ET AL. *v.* WILLIAMS. C. A. 6th Cir. Certiorari denied. Reported below: 24 F. 3d 1526.

No. 94–351. TODD, SPECIAL ADMINISTRATOR OF THE ESTATE OF TODD, A DECEASED MINOR *v.* SOCIETE BIC, S. A., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 1402.

No. 94–352. S. W. S. Erectors, Inc., dba Southwest Signs *v.* Triangle Sign & Service, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–354. Kralman *v.* Illinois Department of Veterans' Affairs. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 150.

No. 94–359. Carter *v.* Harry Lee Carter Estate Management Trust et al. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 94–360. Hosoya Fireworks Co., Ltd. *v.* Barone et al. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 610.

No. 94–361. Bybee *v.* Proctor Community Hospital. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 1053.

No. 94–369. Kayani *v.* Fields et al. Sup. Ct. Va. Certiorari denied.

No. 94–389. Clostermann *v.* Johnson et al. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1439.

No. 94–448. Invex Holdings, N. V. *v.* Equitable Life Insurance Company of Iowa. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 241.

No. 94–452. Roscoe *v.* City of Albuquerque et al. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5040. Wilson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 34.

No. 94–5148. Jones *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 94–5171. Glover *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 133.

No. 94–5271. Fletcher *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1430.

No. 94–5279. Lee *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 413.

No. 94–5288. CRAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 468.

No. 94–5293. DELLORFANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–5313. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 600.

No. 94–5322. MUCCIANTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 21 F. 3d 1228.

No. 94–5356. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1222.

No. 94–5395. CONNOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1426.

No. 94–5398. MANDILAKIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 23 F. 3d 278.

No. 94–5421. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 20.

No. 94–5442. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 637.

No. 94–5457. ROBERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 862.

No. 94–5470. STANKOWSKI *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–5486. GRIFFIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1432.

No. 94–5555. IGBO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 94–5560. AGOFSKY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 866.

No. 94–5600. LAMPKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 94–5602. LUCHT ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 18 F. 3d 541.

No. 94–5603. PIROLLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 560.

No. 94–5615. SERNA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 25 F. 3d 1037.

No. 94–5619. GRIFFIN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 183 Wis. 2d 327, 515 N. W. 2d 535.

No. 94–5623. CASTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 333.

No. 94–5652. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 57.

No. 94–5665. HOOKER, AKA BANKS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 18 F. 3d 954.

No. 94–5709. CUNNINGHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 127.

No. 94–5714. SCHWAB *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 636 So. 2d 3.

No. 94–5720. ENIGWE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–5732. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 240.

No. 94–5738. SANDERS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5745. KELLY *v.* L. L. COOL J ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 398.

No. 94–5751. MCMENNEMY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 115.

No. 94–5777. WEBBER *v.* FRANKLIN COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1491.

No. 94–5779. RAINEY *v.* THIGPEN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 409.

No. 94–5780. NICHOLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1216.

No. 94–5782. McFADDEN *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–5784. BURTON *v.* CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 208.

No. 94–5785. SAADE *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–5787. DAY *v.* NORMAN ET AL. Ct. App. Ga. Certiorari denied.

No. 94–5791. POWERS *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 92 Ohio App. 3d 400, 635 N. E. 2d 1298.

No. 94–5796. FRUCHTMAN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 418 Mass. 8, 633 N. E. 2d 369.

No. 94–5799. TARKOWSKI *v.* ROBERT BARTLETT REALTY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–5800. ESQUIBEL *v.* RICE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 1430.

No. 94–5804. GARRETT *v.* KASON INDUSTRIES, INC., ET AL. Super. Ct. Coweta County, Ga. Certiorari denied.

No. 94–5805. KELLEY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–5806. JERNIGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 621.

No. 94–5807. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 580.

No. 94–5808. BROCKMAN *v.* SWEETWATER COUNTY SCHOOL DISTRICT NO. 1. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1055.

No. 94–5809. JARRETT *v.* US SPRINT COMMUNICATIONS CO. C. A. 10th Cir. Certiorari denied. Reported below: 22 F. 3d 256.

No. 94–5818. SIERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–5828. TUCKER *v.* ESSEX COUNTY JAIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1431.

No. 94–5836. MARIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 560.

No. 94–5838. LEKAN *v.* AMERICAN ENERGY SERVICES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 94–5839. LOMPREZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 155 Ill. 2d 564, 633 N. E. 2d 5.

No. 94–5840. MANCINI *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1438, 632 N. E. 2d 522.

No. 94–5841. MITCHELL *v.* ZENT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–5842. RATHER *v.* PRICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–5844. ODIAGA *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 125 Idaho 384, 871 P. 2d 801.

No. 94–5848. BARTLETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1098.

No. 94–5850. JOSEPH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–5852. GRIFFITH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 158 Ill. 2d 476, 634 N. E. 2d 1069.

No. 94–5870. AULTMAN *v.* LARKINS, DEPUTY WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1484.

No. 94–5872. ALLEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 871 P. 2d 79.

No. 94–5881. HIGHTOWER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 25 F. 3d 182.

No. 94–5882. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1043.

No. 94–5886. DUBERRY *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 556.

No. 94–5889. DAVIS *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 874 S. W. 2d 403.

No. 94–5899. DUBYAK *v.* SAN BERNARDINO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5935. LOWE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1059.

No. 94–5952. ATKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 1401.

No. 94–5954. SHORTER *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 403.

No. 94–5967. HARRIS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 870 S. W. 2d 798.

No. 94–5970. LLOYD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 540.

No. 94–5992. BOOTH *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 124 Ore. App. 282, 862 P. 2d 518.

No. 94–6001. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–6005. CARNET *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 133.

No. 94–6006. ARENAS-PATINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 620.

No. 94–6008. CRANSHAW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–6018. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–6022. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–6023. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 F. 3d 507.

No. 94–6028. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 636.

No. 94–6029. GAUMER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 568.

No. 94–6034. REINKE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 183 Wis. 2d 435, 516 N. W. 2d 23.

No. 94–6035. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1122.

No. 94–6041. KUBOSH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 1118.

No. 94–6049. MOFFITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6051. HEIP TRAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1060.

No. 94–6053. RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 569.

No. 94–6057. LIZALDE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–6060. KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6061. GORDON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 571.

No. 94–6062. EPPS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 26 F. 3d 1186.

No. 94–6072. QUIROZ-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 251.

No. 94–6075. CANNON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 94–6078. BELLAZERIUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 698.

No. 94–6080. BELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6082. SPRINGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 17 F. 3d 192.

No. 94–6085. WEST *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 185 Wis. 2d 68, 517 N. W. 2d 482.

No. 94–6086. SIERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–6092. MARSHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1378.

No. 94–6095. GABLE *v.* UNITED STATES; and
No. 94–6113. FUNDERBURK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 133.

No. 94–6096. COLLINS *v.* HESSE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 141.

No. 94–6098. STANWOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–6106. ENAND *v.* ATLIS SYSTEMS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 400.

No. 94–6108. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 50.

No. 94–6109. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–6114. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 417.

No. 94–6125. RIVERA MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 236.

No. 93–2069. IDAHO *v.* ODIAGA. Sup. Ct. Idaho. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 125 Idaho 384, 871 P. 2d 801.

No. 93–9061. SPEARMAN *v.* EXXON COAL USA, INC. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 F. 3d 722.

No. 94–416. MALIA ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 23 F. 3d 828.

No. 94–5760. BOWIE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 28 F. 3d 1296.

No. 94–6097. HERNANDEZ COPLIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 24 F. 3d 312.

No. 94–38. MORELAND *v.* RESOLUTION TRUST CORPORATION. C. A. 6th Cir. Motion of Fifth RMA Partners, Real Party in Interest, for leave to substitute Fifth RMA Partners as party respondent granted. Certiorari denied. Reported below: 21 F. 3d 102.

No. 94–300. T. B. BUTLER PUBLISHING CO., INC. *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS ET AL. C. A. 5th Cir. Motion of petitioner for leave to lodge sealed record excerpts granted. Certiorari denied. Reported below: 20 F. 3d 469.

OCTOBER 28, 1994

Dismissal Under Rule 46

No. 94–5484. HOLMES *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 32 F. 3d 1240.

OCTOBER 31, 1994

Certiorari Granted—Vacated and Remanded

No. 93–9478. SIMON *v.* MISSISSIPPI. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127 (1994). Reported below: 633 So. 2d 407.

No. 94–334. WILLIAMS ET AL. *v.* PLANNED PARENTHOOD SHASTA-DIABLO, INC. Sup. Ct. Cal. Certiorari granted, judg-

ment vacated, and case remanded for further consideration in light of *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994). Reported below: 7 Cal. 4th 860, 873 P. 2d 1224.

No. 94–5463. PALMIERI *v.* UNITED STATES. C. A. 3d 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 *Staples* v. *United States*, 511 U. S. 600 (1994). Reported below: 21 F. 3d 1265.

Miscellaneous Orders. (See also No. ——, *ante*, p. 5.)

No. ——. WEST *v.* COUNTY OF KERN ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. ——. MYERS *v.* ESTELLE, WARDEN, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. D–1420. IN RE DISBARMENT OF BERNSTEIN. Disbarment entered. [For earlier order herein, see 512 U. S. 1267.]

No. D–1424. IN RE DISBARMENT OF HOLZMANN. Disbarment entered. [For earlier order herein, see 512 U. S. 1268.]

No. D–1426. IN RE DISBARMENT OF NOLAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1268.]

No. D–1428. IN RE DISBARMENT OF STERNBERG. Disbarment entered. [For earlier order herein, see 512 U. S. 1268.]

No. D–1430. IN RE DISBARMENT OF FIELD. Disbarment entered. [For earlier order herein, see 512 U. S. 1269.]

No. D–1432. IN RE DISBARMENT OF THOMPSON. Disbarment entered. [For earlier order herein, see 512 U. S. 1269.]

No. D–1435. IN RE DISBARMENT OF MCGREEVY. Disbarment entered. [For earlier order herein, see 512 U. S. 1275.]

No. D–1436. IN RE DISBARMENT OF SIMS. Disbarment entered. [For earlier order herein, see 512 U. S. 1275.]

No. D–1438. IN RE DISBARMENT OF KENNEDY. Disbarment entered. [For earlier order herein, see 512 U. S. 1275.]

No. D–1439. IN RE DISBARMENT OF CRIST. Disbarment entered. [For earlier order herein, see 512 U. S. 1275.]

No. D–1440. IN RE DISBARMENT OF OFFSTEIN. Disbarment entered. [For earlier order herein, see 512 U. S. 1275.]

No. D–1441. IN RE DISBARMENT OF HAMER. Disbarment entered. [For earlier order herein, see 512 U. S. 1276.]

No. D–1463. IN RE DISBARMENT OF RILEY. It is ordered that Christopher H. Riley, Jr., of Millville, N. J., be suspended from the practice of law in this Court and that a rule 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–1464. IN RE DISBARMENT OF SMITH. It is ordered that Davis Hall Smith, of Jackson, Miss., be suspended from the practice of law in this Court and that a rule 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. 93–1636. SWINT ET AL. *v.* CHAMBERS COUNTY COMMISSION ET AL. C. A. 11th Cir. [Certiorari granted, 512 U. S. 1204.] The parties are directed to file supplemental briefs addressing the following question: "Whether the Eleventh Circuit, by virtue of its jurisdiction to review the District Court's denial of the individual defendants' motions seeking summary judgment on the basis of qualified immunity, also had jurisdiction to review the District Court's denial of the Chambers County Commission's motion for summary judgment." Brief of petitioners is to be filed on or before Wednesday, November 30, 1994. Brief of respondents is to be filed on or before Thursday, December 15, 1994. This Court's Rule 29.2 does not apply. This case is removed from the December 6, 1994, argument calendar.

No. 93–7927. KYLES *v.* WHITLEY, WARDEN. C. A. 5th Cir. [Certiorari granted, 511 U. S. 1051.] Motion of petitioner to enlarge the record granted.

No. 94–5843. RODENBAUGH *v.* SENAPE ET AL. C. A. 3d Cir.;
No. 94–6132. IN RE REIDT; and
No. 94–6133. IN RE GEURIN. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until November 21, 1994, within which to

pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–6099. IN RE MENDIVE GONZALEZ; and
No. 94–6107. IN RE FLOWERS. Petitions for writs of habeas corpus denied.

No. 94–5659. IN RE JEFFUS; and
No. 94–5983. IN RE LOOMIS. Petitions for writs of mandamus denied.

Certiorari Granted

No. 94–367. HEINTZ ET AL. *v.* JENKINS. C. A. 7th Cir. Certiorari granted. Reported below: 25 F. 3d 536.

No. 94–372. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* WHITECOTTON ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 17 F. 3d 374.

No. 94–395. UNITED STATES *v.* WILLIAMS. C. A. 9th Cir. Certiorari granted. Reported below: 24 F. 3d 1143.

No. 94–23. CITY OF EDMONDS *v.* OXFORD HOUSE, INC., ET AL. C. A. 9th Cir. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 18 F. 3d 802.

No. 94–172. HUBBARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted limited to the following question: "Whether petitioner's convictions under 18 U. S. C. § 1001 for knowingly making false statements in pleadings filed with the Bankruptcy Court are barred by the so-called 'judicial function' exception to § 1001." Reported below: 16 F. 3d 694.

No. 94–329. ROSENBERGER ET AL. *v.* RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA ET AL. C. A. 4th Cir. Motions of Intercollegiate Studies Institute and Christian Legal Society et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 18 F. 3d 269.

Certiorari Denied

No. 93–2073. DASHNAW *v.* PENA, SECRETARY OF TRANSPORTATION. C. A. D. C. Cir. Certiorari denied. Reported below: 12 F. 3d 1112.

No. 93–8580. SMITH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 868 S. W. 2d 561.

No. 93–8843. MOTLEY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1223.

No. 93–9257. O'NEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 17 F. 3d 239.

No. 93–9344. BANNISTER *v.* ARMONTROUT, ASSISTANT DIRECTOR/ZONE II, MISSOURI DIVISION OF ADULT INSTITUTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 4 F. 3d 1434.

No. 93–9496. BENSON *v.* UNITED STATES; and AMBORT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93–9553. RUSSELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 468.

No. 93–9564. ABDURRAHMAN *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93–9602. ROURKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 407.

No. 93–9646. SNELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 1289.

No. 93–9653. SINGLETON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 316 Ark. 133, 870 S. W. 2d 742.

No. 93–9722. SCOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 418.

No. 93–9751. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 11 F. 3d 732.

No. 93–9765. SHEA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 305.

No. 93–9769. BEHLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 1264.

No. 93–9789. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 412.

No. 94–42. MIDDLEMIST ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1318.

No. 94–96. GOLDEN PACIFIC BANCORP ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 15 F. 3d 1066.

No. 94–116. SCHOOL CITY OF MISHAWAKA *v.* FAMILY & CHILDREN'S CENTER, INC. C. A. 7th Cir. Certiorari denied. Reported below: 13 F. 3d 1052.

No. 94–190. MCGRATH *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 39 M. J. 158.

No. 94–208. ZYCH, DBA AMERICAN DIVING & SALVAGE CO. *v.* ILLINOIS HISTORIC PRESERVATION AGENCY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 1136.

No. 94–252. MERCY MEMORIAL HOSPITAL CORP. *v.* HOSPITAL EMPLOYEES' DIVISION OF LOCAL 79, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL–CIO. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1080.

No. 94–256. BABIN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1032.

No. 94–259. BROWN *v.* NATIONAL MEDICAL ENTERPRISES INC. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–265. WIKBERG *v.* REICH, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 188.

No. 94–268. B & A MARINE CO., INC. *v.* AMERICAN FOREIGN SHIPPING CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 709.

No. 94–301. CRAIG *v.* CALIFORNIA STATE BAR. Sup. Ct. Cal. Certiorari denied.

No. 94–346. PRITCHETT *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 624.

No. 94–376. SULMEYER, CHAPTER 11 TRUSTEE *v.* PACIFIC BMW. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 130.

No. 94–377. BRESNAN COMMUNICATIONS CO. *v.* CITY OF HUNTSVILLE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1175.

No. 94–378. MARSILIO *v.* CONSOLIDATED RAIL CORPORATION. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 122.

No. 94–380. IZEN ET AL. *v.* NICHOLS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 690.

No. 94–382. COLLINS ET AL. *v.* SCHWEITZER, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1491.

No. 94–391. INTERNATIONAL BUSINESS MACHINES CORP. *v.* SIMS, CHAPTER 11 TRUSTEE, BANKRUPTCY ESTATE OF UNICOM COMPUTER CORP. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 94–394. TRANSPHASE SYSTEMS, INC. *v.* SOUTHERN CALIFORNIA EDISON CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–398. AZOR ET AL. *v.* CARDINAL INDUSTRIES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1439.

No. 94–408. REDWOOD VILLAGE PARTNERSHIP *v.* GRAHAM ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 839.

No. 94–409. BAILEY *v.* BOARD OF EDUCATION FOR THE DETROIT PUBLIC SCHOOLS. Ct. App. Mich. Certiorari denied.

No. 94–410. REYNOLDS *v.* INTERNATIONAL AMATEUR ATHLETIC FEDERATION. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1110.

No. 94–415. IN RE M. K. ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 431 Pa. Super. 198, 636 A. 2d 198.

No. 94–419. EDWARDS *v.* GREAT-WEST LIFE ASSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 20 F. 3d 748.

No. 94–420. ACCREDITED SURETY & CASUALTY CO., INC. *v.* MCELVEEN, SHERIFF, CALCASIEU PARISH. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 631 So. 2d 563.

No. 94–421. DICKERSON ET AL. *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 631.

No. 94–423. KOVACS ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1048.

No. 94–424. KNIPE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 390.

No. 94–426. SNAP-TITE, INC. *v.* NATIONAL COUPLING CO., INC. C. A. Fed. Cir. Certiorari denied. Reported below: 29 F. 3d 644.

No. 94–429. ASHNESS *v.* FIRST BANK & TRUST CO. Sup. Ct. R. I. Certiorari denied. Reported below: 643 A. 2d 802.

No. 94–432. BUSCHMAN *v.* AIKEN & MAWICKE, S. C., ET AL. Ct. App. Wis. Certiorari denied. Reported below: 184 Wis. 2d 402, 516 N. W. 2d 789.

No. 94–433. LAIDLAW HOLDINGS, INC., ET AL. *v.* POLLACK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 808.

No. 94–436. CHICAGO BOARD OF EDUCATION *v.* AFFILIATED FM INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 1261.

No. 94–437. BREAUX BROTHERS FARMS, INC., ET AL. *v.* TECHE SUGAR CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 83.

No. 94–439. MOORE *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 569, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–443. MODERN GRAPHIC ARTS, INC., ET AL. *v.* BEDINGHAUS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1027.

No. 94–446. CITY OF CORVALLIS *v.* TURPEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 978.

No. 94–447. JERREL *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–450. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL. *v.* WINEGAR. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 895.

No. 94–453. DAVIS *v.* JOHNSON CONTROLS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 866.

No. 94–457. ILLINOIS STATE BOARD OF ELECTIONS ET AL. *v.* HASTERT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1430.

No. 94–460. JACKSON *v.* CONGRESS OF THE UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–465. STEVENS ET AL. *v.* STOTT ET AL. Ct. App. Ore. Certiorari denied. Reported below: 127 Ore. App. 440, 873 P. 2d 380.

No. 94–467. HUMPHREYS *v.* TEXAS STATE BAR. Sup. Ct. Tex. Certiorari denied. Reported below: 880 S. W. 2d 402.

No. 94–468. LEE ET AL. *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 3d 14.

No. 94–473. MARTIN ET AL. *v.* BANK OF FLOYD. Sup. Ct. Va. Certiorari denied.

No. 94–484. FLECK ET AL. *v.* HOFFINGER INDUSTRIES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1171.

No. 94–487. BRASWELL *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 118.

No. 94–488. DORMAN *v.* EMERSON ELECTRIC CO. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 1354.

No. 94–489. FARMER *v.* SUPERIOR COURT OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO (CHEIT ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–492. Union School District et al. *v.* Smith, By and Through His Parents, Smith et al. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1519.

No. 94–493. Rokke *v.* Check Services Northwest. Ct. App. Wash. Certiorari denied. Reported below: 71 Wash. App. 1056.

No. 94–497. Vaughan *v.* Benedict et al. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1092.

No. 94–507. Starnes *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 568.

No. 94–517. Laughlin *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 26 F. 3d 1523.

No. 94–519. Gonzalez *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 39 M. J. 459.

No. 94–522. Banda Gutierrez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 108.

No. 94–524. Lee *v.* State Bar of California. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 247.

No. 94–537. Godfrey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 263.

No. 94–541. Anders *v.* West Mead Township Zoning Hearing Board et al. Commw. Ct. Pa. Certiorari denied. Reported below: 156 Pa. Commw. 683, 626 A. 2d 692.

No. 94–572. Gile *v.* Optical Radiation Corp. et al. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 540.

No. 94–579. Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1095.

No. 94–583. Yurch *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 229 Conn. 516, 641 A. 2d 1387.

No. 94–600. Kelly *v.* Kentucky. Sup. Ct. Ky. Certiorari denied. Reported below: 875 S. W. 2d 865.

No. 94–5003. Cruz *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 94–5019. EHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 12.

No. 94–5032. WHITEHEAD *v.* GREER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–5042. WITHERSPOON *v.* UNITED STATES; and
No. 94–5412. SMALLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 94–5180. FONTENOT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 F. 3d 1364.

No. 94–5201. WHALEN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–5214. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 F. 3d 1356.

No. 94–5222. EATON *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 94–5235. PARSONS *v.* BARNES, WARDEN. Sup. Ct. Utah. Certiorari denied. Reported below: 871 P. 2d 516.

No. 94–5265. EARHART *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 877 S. W. 2d 759.

No. 94–5294. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1108.

No. 94–5319. CLARK *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 959.

No. 94–5334. CRANE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–5342. BLANCHARD *v.* SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 21 Cal. App. 4th 1010, 26 Cal. Rptr. 2d 586.

No. 94–5354. OVERLY *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 94–5374. ESCOBEDO, AKA JOQUIN, AKA HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1441.

No. 94–5387. PAYNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 94–5404. HOLLINGSHEAD *v.* HOXWORTH ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 135 N. J. 473, 641 A. 2d 235.

No. 94–5406. FREE *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 12 F. 3d 700.

No. 94–5413. SCUDDER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1123.

No. 94–5423. WABLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1431.

No. 94–5429. SNELENBERGER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 24 F. 3d 799.

No. 94–5430. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 404.

No. 94–5503. LOVE ET AL. *v.* UNITED STATES; WILSON *v.* UNITED STATES; BENDER *v.* UNITED STATES; and JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 415 (first case); 9 F. 3d 115 (second case); 16 F. 3d 977 (third case); 26 F. 3d 127 (fourth case).

No. 94–5578. DUNCAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1097.

No. 94–5588. KRALL *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5590. WILLIAMSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 445.

No. 94–5601. PORTWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1094.

No. 94–5630. SKURDAL *v.* BARR ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 127.

No. 94–5642. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 237.

No. 94–5651. YOUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1095.

No. 94–5657. COHEN *v.* FEDERAL SAVINGS & LOAN INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1432.

No. 94–5667. AYRS *v.* GREENWALD. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1111.

No. 94–5673. MARTINEZ RAMIREZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 178 Ariz. 116, 871 P. 2d 237.

No. 94–5678. MALIK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 16 F. 3d 45.

No. 94–5737. YEOMAN *v.* DOUGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–5744. KELLY *v.* BROADCAST MUSIC, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 407.

No. 94–5756. MATA *v.* RICKETTS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 397.

No. 94–5811. JOHNSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 97, 636 N. E. 2d 485.

No. 94–5812. DEVILLE ET AL. *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 654.

No. 94–5814. DOKES *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 833.

No. 94–5817. RIVERA DEMUNIZ *v.* OREGON PAROLE BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1112.

No. 94–5822. MOON *v.* ZANT, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 93, 440 S. E. 2d 657.

No. 94–5823. MCNARY *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 16 F. 3d 1225.

No. 94–5829. TYLER *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 127.

No. 94–5830. WHITSON *v.* PET INC. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 24 F. 3d 243.

No. 94–5831. STOREY *v.* IDAHO CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 634.

No. 94–5832. WILLIAMS *v.* DUVAL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 94–5834. SHAW *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5856. JACOBS *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 874 S. W. 2d 506.

No. 94–5858. GARCIA ET UX. *v.* BERNSTEIN ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 94–5859. GILES *v.* SNOW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 37.

No. 94–5861. GALLANT *v.* DELAHANTY, CHIEF JUSTICE, SUPERIOR COURT OF MAINE, ANDROSCOGGIN COUNTY, ET AL. C. A. 1st Cir. Certiorari denied.

No. 94–5862. FLOWERS *v.* INDIANA UNIVERSITY SCHOOL OF LAW, INDIANAPOLIS. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 569.

No. 94–5868. PEW *v.* COX. C. A. 3d Cir. Certiorari denied.

No. 94–5869. PEMBERTHY ET AL. *v.* BEYER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 857.

No. 94–5875. POWELL *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 445 Mich. 927, 521 N. W. 2d 7.

No. 94–5876. JUDGE *v.* BOLAN. Ct. Civ. App. Ala. Certiorari denied. Reported below: 642 So. 2d 486.

No. 94–5888. ROLLER *v.* LEMACKS ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–5891. WILMER *v.* JOHNSON, DIRECTOR, PRETRIAL SERVICES DIVISION, PHILADELPHIA COURT OF COMMON PLEAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 451.

No. 94–5892. MCFADDEN *v.* SEARS, ROEBUCK & CO. ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 444 Mich. 960, 514 N. W. 2d 767.

No. 94–5897. DYER *v.* SHELDON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 432.

No. 94–5898. MORTIMER *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 135 N. J. 517, 641 A. 2d 257.

No. 94–5903. FREDELUCES *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 16 F. 3d 421.

No. 94–5905. BAXTER *v.* CALIFORNIA COMMISSION ON JUDICIAL APPOINTMENTS. Sup. Ct. Cal. Certiorari denied.

No. 94–5914. MATLOCK *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–5915. COLE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 635 So. 2d 27.

No. 94–5916. WOODALL *v.* ROWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 136.

No. 94–5919. ALLEN *v.* DANE COUNTY. Ct. App. Wis. Certiorari denied. Reported below: 183 Wis. 2d 431, 516 N. W. 2d 20.

No. 94–5925. AWAWDEH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 72 Wash. App. 373, 864 P. 2d 965.

No. 94–5928. HYMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 718, 643 A. 2d 704.

No. 94–5930. ROSS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 872 P. 2d 940.

No. 94–5940. MELTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 638 So. 2d 927.

No. 94–5941. JOHNSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5943. COULOMBE *v.* BOWERS ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–5944. CONLEY *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 126.

No. 94–5945. CURIALE ET UX. *v.* ANDRUS, GOVERNOR OF IDAHO, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5946. AMMAR *v.* SHILLING. Cir. Ct. Montgomery County, Md. Certiorari denied.

No. 94–5947. BAILEY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5948. BREARD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 248 Va. 68, 445 S. E. 2d 670.

No. 94–5949. AIZEN *v.* NEW JERSEY DEPARTMENT OF EDUCATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1484.

No. 94–5951. BROSSETTE *v.* CITY OF BATON ROUGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–5955. DUNHAM-BEY *v.* MICHIGAN. Cir. Ct. Muskegon County, Mich. Certiorari denied.

No. 94–5956. KERPAN ET UX. *v.* DAVIS. C. A. 8th Cir. Certiorari denied.

No. 94–5957. GIBB *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 638 So. 2d 73.

No. 94–5959. BOYLE *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1047.

No. 94–5962. GILL *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–5963. GOMEZ *v.* BRUN APARTMENTS. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1043.

No. 94–5965. DOOSE *v.* POPPEN ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–5966. BOROJA *v.* NEDELJKOVICH ET AL. Ct. App. Mich. Certiorari denied.

No. 94–5968. OGUNSALU *v.* KROGER CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1433.

No. 94–5974. DRAKE *v.* WALKER ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–5976. BAKER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–5981. LINDSEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 636 So. 2d 1327.

No. 94–5982. PENK *v.* CITY OF AURORA ET AL. Sup. Ct. Colo. Certiorari denied.

No. 94–5984. PARKER *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1394.

No. 94–5985. PINSTER *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 94–5986. MORRIS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–5987. REED *v.* HENSON. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 432.

No. 94–5990. DAMERVILLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 254.

No. 94–5996. VAN DUESEN *v.* EVATT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1212.

No. 94–5997. SMITH *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 103.

No. 94–5998. REBAR *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1439.

No. 94–5999. MOORE *v.* DILLON, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–6000. OWENS *v.* LARSEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1210.

No. 94–6002. SANCHEZ *v.* MCLENDON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 302.

No. 94–6003. SHAW *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–6004. SCALES *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94–6007. DIGIANNI *v.* SAKS FIFTH AVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 35 F. 3d 553.

No. 94–6010. MARCH *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 240.

No. 94–6012. MATA *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 94–6014. CARROLL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 636 So. 2d 1316.

No. 94–6019. NOORZIN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 199 App. Div. 2d 69, 605 N. Y. S. 2d 37.

No. 94–6026. MONTGOMERY *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1040.

No. 94–6030. ISIAH *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1057.

No. 94–6033. REBAR *v.* MARSH, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6037. MOBIN *v.* WIDNALL, SECRETARY OF THE AIR FORCE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1114.

No. 94–6040. FAIRCHILD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 317 Ark. 166, 876 S. W. 2d 588.

No. 94–6044. HOUSTON *v.* ROCHA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–6047. HARRIS *v.* ROBINSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 11.

No. 94–6065. AZAR *v.* HEALTH ALLIANCE PLAN. C. A. 6th Cir. Certiorari denied.

No. 94–6066. HOEKEL *v.* PLUMBING PLANNING CORP. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 839.

No. 94–6067. JOHNS *v.* MCFADDEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 247.

No. 94–6068. HERNANDEZ *v.* IEYOUB, ATTORNEY GENERAL OF LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 94–6069. JOHNSON *v.* DICKINSON. Ct. App. Tenn. Certiorari denied.

No. 94–6070. HOWARD *v.* BEASON ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 662 So. 2d 927.

No. 94–6071. FORD ET AL. *v.* CLEMENT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–6073. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–6074. DUNMORE *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 1477.

No. 94–6079. CLEMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 640.

No. 94–6081. VELASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 135.

No. 94–6084. SMITH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 638 So. 2d 509.

No. 94–6090. DAVIS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 637 So. 2d 1012.

No. 94–6091. BRIFIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–6102. CLEVELAND *v.* SCHLEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–6105. BEASLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 634.

No. 94–6134. HANSON *v.* PASSER, CHIEF EXECUTIVE OFFICER, ANOKA COUNTY ADULT DETENTION FACILITY. C. A. 8th Cir. Certiorari denied.

No. 94–6135. GUZMAN-BRUNO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 420.

No. 94–6139. ZAVALA MALDONADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 3d 4.

No. 94–6141. MOHAMMED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 815.

No. 94–6143. MITCHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 94–6144. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1215.

No. 94–6145. SCHMIDT ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–6146. ALONSO *v.* MUNICIPAL COURT OF CALIFORNIA, COUNTY OF VENTURA (CALIFORNIA, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6147. PAYTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 17.

No. 94–6154. FORD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 25 F. 3d 1115.

No. 94–6156. MCCULLOUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 251.

No. 94–6159. BASHFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 F. 3d 412.

No. 94–6161. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 1126.

No. 94–6165. CARVER *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 94–6167. RIMELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 281.

No. 94–6171. BAUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–6177. RIDINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–6182. LAVIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 40.

No. 94–6185. WADDELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1215.

No. 94–6186. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 24 F. 3d 829.

No. 94–6190. VETETO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 641.

No. 94–6191. MARTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 142.

No. 94–6192. LONGENETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6193. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 29 F. 3d 914.

No. 94–6194. PEREZ-MONRAGON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 110.

No. 94–6196. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 637.

No. 94–6197. MARTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 109.

No. 94–6198. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 F. 3d 271.

No. 94–6199. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6202. REDMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 1118.

No. 94–6203. CRAIG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–6208. JOHNSON *v.* ROSEMEYER, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 301.

No. 94–6210. URENA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 27 F. 3d 1487.

No. 94–6212. HUTCHISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 109.

No. 94–6218. ELCOCK *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 276.

No. 94–6219. LAN NGOC TRAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 785.

No. 94–6220. HOOVER *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 1118.

No. 94–6221. HUNG VAN HUYNH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6223. FERGUSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 243.

No. 94–6224. KLEINBART *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 27 F. 3d 586.

No. 94–6225. LOCKLEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 24 F. 3d 641.

No. 94–6233. SIMMONS *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94–6235. CROMLISH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6236. COLBURN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–6237. TORRES VELASQUEZ ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 694.

No. 94–6243. ESCOBAR-URREGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–6245. FITZGERALD ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6246. GUTIERREZ-CALLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–6248. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–6253. HARRIS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1275.

No. 94–6256. HERNANDEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1213.

No. 94–6262. COMPTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6269. HOUCK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 28 F. 3d 113.

No. 94–6275. DAGO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 F. 3d 63.

No. 94–6277. MESA-CELIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–6280. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 115.

No. 94–6281. NATHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–6283. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 969.

No. 94–6298. HOBBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 562.

No. 94–6300. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–6301. FIGUEROA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 631.

No. 93–1663. MEANS *v.* WORTHAM ET AL. C. A. 5th Cir. Motions of National Association of Assistant United States Attorneys et al., Federal Bar Association, and 403 Attorney-Employees of the U. S. Department of Justice for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 4 F. 3d 1313.

No. 94–169. SWANNER, DBA WHITEHALL PROPERTIES *v.* ANCHORAGE EQUAL RIGHTS COMMISSION ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 874 P. 2d 274.

JUSTICE THOMAS, dissenting.

Petitioner owns residential rental property in Anchorage, Alaska. He maintained a consistent policy of refusing to rent to any unmarried couple who intended to live together on his property, based on his sincere religious belief that such cohabitation is a sin and that he would be facilitating the sin by renting to cohabitants. At the instigation of several people to whom petitioner applied his policy, respondent ruled that petitioner had violated state and local ordinances that prohibit landlords from basing rental decisions on prospective tenants' "marital status." Petitioner appealed to the Alaska Superior Court, which upheld respondent's ruling. The Alaska Supreme Court affirmed, concluding that the application of the ordinances to petitioner's conduct did not violate his right to the free exercise of religion under either the United States Constitution or the Alaska Constitution. 874 P. 2d 274, 279–284 (1994) *(per curiam)*.

The Alaska Supreme Court also ruled that petitioner had no defense to the state and local ordinances under the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U. S. C. § 2000bb *et seq.* (1988 ed., Supp. V), enacted during the pendency of the proceedings below. RFRA provides that a governmental entity "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the entity "demonstrates that application of the burden to the person . . . is in furtherance of a compelling governmental interest." §§ 2000bb–1(a), (b)(1).[1] In a footnote, the opinion below dismissed petitioner's invocation of this Act of Congress: "Assuming that the Act is constitutional and applies to this case, it does not affect the outcome, because we hold in the next section that compelling state interests support the prohibitions on marital status discrimination." 874 P. 2d, at 280, n. 9. Petitioner seeks review of this latter ruling. I would grant certiorari to resolve whether, under RFRA, an interest in preventing discrimination based on marital status is sufficiently "compelling" that respondent may substantially burden petitioner's exercise of religion.

RFRA explicitly adopted "the compelling interest test as set forth in Sherbert v. Verner . . . and Wisconsin v. Yoder." 42 U. S. C. § 2000bb(b)(1) (1988 ed., Supp. V). In *Sherbert* v. *Verner*, 374 U. S. 398 (1963), we stated: "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, 'only the gravest abuses [by religious adherents], endangering paramount interests, give occasion for permissible limitation [on the exercise of religion].'" *Id.*, at 406 (quoting *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945)). And in *Wisconsin* v. *Yoder*, 406 U. S. 205 (1972), we emphasized that the government's asserted interest must be truly paramount: "The essence of all that has been said and written on the subject is that only those interests *of the highest order* . . .

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[1] RFRA was Congress' response to our decision in *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990), which supplanted the compelling interest test in Free Exercise Clause jurisprudence with the inquiry into whether a governmental burden on religiously motivated action is both "neutral" and "generally applicable." Thus, as a substitute for constitutional protection, RFRA grants a *statutory* "claim or defense to persons whose religious exercise is substantially burdened by government." 42 U. S. C. § 2000bb(b)(2) (1988 ed., Supp. V).

can overbalance legitimate claims to the free exercise of religion." *Id.*, at 215 (emphasis added).

I am quite skeptical that Alaska's asserted interest in preventing discrimination on the basis of marital status is "compelling" enough to satisfy these stringent standards. Our decision in *Bob Jones Univ.* v. *United States*, 461 U. S. 574 (1983), is instructive in the context of asserted governmental interests in preventing private "discrimination." In that case, we held that "the Government has a fundamental, overriding interest in eradicating racial discrimination in education." *Id.*, at 604. We found such an interest fundamental and overriding—in a word, "compelling," see *ibid.*—only because we had found that "[o]ver the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination in public education." *Id.*, at 593 (discussing, *inter alia*, *Brown* v. *Board of Education*, 347 U. S. 483 (1954); *Cooper* v. *Aaron*, 358 U. S. 1 (1958); and Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U. S. C. § 3601 *et seq.* (1976 ed. and Supp. V)).

By contrast, there is surely no "firm national policy" against marital status discrimination in housing decisions. Chief Justice Moore, dissenting in the case below, correctly observed that "marital status classifications have never been accorded any heightened scrutiny under the Equal Protection Clause of either the federal or the Alaska Constitutions." 874 P. 2d, at 289. Accord, *Smith* v. *Shalala*, 5 F. 3d 235, 239 (CA7 1993) ("Because [a] classification based on marital status does not involve a suspect class . . . , we must examine it under the rational basis test"), cert. denied, 510 U. S. 930 (1994). Moreover, the federal Fair Housing Act does not prohibit people from making housing decisions based on marital status. See 42 U. S. C. § 3604 (outlawing housing discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin). Cf. § 3602(k) (defining "familial status" to mean the domicil of children with adults).

Nor does Alaska law, apart from the statutes at issue in this case, attest to any firm *state* policy against marital status discrimination. Indeed, as the dissent below pointed out:

> "Alaska law explicitly sanctions such discrimination. *See, e. g.*, AS 13.11.015 (intestate succession does not benefit unmarried partner of decedent); AS 23.30.215(a) (workers' compensation death benefits only for surviving spouse, child, par-

> ent, grandchild, or sibling); Alaska R. Evid. 505 (no marital communication privilege between unmarried couples); *Serradell* v. *Hartford Accident & Indemn. Co.*, 843 P. 2d 639, 641 (Alaska 1992) (no insurance coverage for unmarried partner under family accident insurance policy)." 874 P. 2d, at 289.

The majority admitted that these were "areas in which the state itself discriminates based on marital status." *Id.*, at 283.

If, despite affirmative discrimination by Alaska on the basis of marital status and a complete absence of any national policy against such discrimination, the State's asserted interest in this case is allowed to qualify as a "compelling" interest—that is, a "paramount" interest, an interest "of the highest order"—then I am at a loss to know what asserted governmental interests are not compelling. The decision of the Alaska Supreme Court drains the word *compelling* of any meaning and seriously undermines the protection for exercise of religion that Congress so emphatically mandated in RFRA.

Although RFRA itself is a relatively new statute, the state courts have already exhibited considerable confusion in applying the *Sherbert-Yoder* test to the specific issue presented by this case. Apart from this case, the highest courts of Massachusetts and Minnesota are each deeply split on the question whether preventing "marital status" discrimination is a "compelling" interest under our precedents, and the California Court of Appeal has twice applied the compelling interest test adopted by RFRA in reaching decisions that are directly contrary to the decision below. See *Attorney General* v. *Desilets*, 418 Mass. 316, 636 N. E. 2d 233 (1994); *State ex rel. Cooper* v. *French*, 460 N. W. 2d 2 (Minn. 1990); *Smith* v. *Fair Employment and Housing Commission*, 30 Cal. Rptr. 2d 395 (Cal. App.), review granted, 880 P. 2d 111 (Cal. 1994); *Donahue* v. *Fair Employment and Housing Commission*, 2 Cal. Rptr. 2d 32 (Cal. App. 1991), review granted, 825 P. 2d 766 (Cal. 1992), review dism'd, cause remanded, 859 P. 2d 671 (Cal. 1993).[2]

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[2] There is no doubt that these decisions applied the *Sherbert-Yoder* test adopted by RFRA. See *Desilets*, 418 Mass., at 321–322, and n. 5, 636 N. E. 2d, at 236, and n. 5 (plurality opinion); *id.*, at 334–335, 636 N. E. 2d, at 243 (Liacos, C. J., concurring); *id.*, at 341, 636 N. E. 2d, at 246 (O'Connor, J., dissenting); *French*, 460 N. W. 2d, at 13–14 (Popovich, C. J., dissenting); *Smith*, 30 Cal. Rptr. 2d, at 403, 406, 409, 410; *Donahue*, 2 Cal. Rptr. 2d, at 41, 44.

By itself, this confusion on an important and recurring question of federal law provides sufficient reason to grant certiorari in this case.

I respectfully dissent.

No. 94–179. CENTRA, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 954 F. 2d 366.

No. 94–5855. JOLLY *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 28 F. 3d 51.

No. 94–535. ZISK ET AL. *v.* PLACER COUNTY SUPERIOR COURT (WALKER, REAL PARTY IN INTEREST). Ct. App. Cal., 3d App. Dist. Motion of petitioners to supplement petition for writ of certiorari denied. Certiorari denied.

No. 94–5977. AZUBUKO *v.* COMMISSIONER OF PARKING, CITY OF BOSTON, ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Assignment Order

An order of THE CHIEF JUSTICE designating Justice White (retired) to perform judicial duties in the United States Court of Appeals for the Fifth Circuit during the period October 31 through November 3, 1994, 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.

NOVEMBER 7, 1994

Certiorari Granted—Vacated and Remanded

No. 93–1004. UNITED STATES *v.* FOSTER. C. A. 9th 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 *United States* v. *Shabani*, *ante*, p. 10. Reported below: 978 F. 2d 716.

No. 93–1353. UNITED STATES *v.* SIMPSON ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded

for further consideration in light of *United States* v. *Shabani*, *ante*, p. 10. Reported below: 10 F. 3d 645.

Miscellaneous Orders

No. ——. WRIGHT *v.* ALEXANDRIA DIVISION OF SOCIAL SERVICES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. ——. ERVIN *v.* SMITH, WARDEN, ET AL.; and
No. ——. GRAHAM *v.* TEXAS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–1425. IN RE DISBARMENT OF ABRAMS. Disbarment entered. [For earlier order herein, see 512 U. S. 1268.]

No. D–1434. IN RE DISBARMENT OF PERRY. Disbarment entered. [For earlier order herein, see 512 U. S. 1275.]

No. D–1442. IN RE DISBARMENT OF FELDMAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1276.]

No. D–1445. IN RE DISBARMENT OF SPARROW. Disbarment entered. [For earlier order herein, see 512 U. S. 1276.]

No. D–1446. IN RE DISBARMENT OF KENDERIAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1276.]

No. D–1447. IN RE DISBARMENT OF CREGAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1276.]

No. D–1448. IN RE DISBARMENT OF CROWLEY. Disbarment entered. [For earlier order herein, see 512 U. S. 1277.]

No. D–1449. IN RE DISBARMENT OF LEVINE. Disbarment entered. [For earlier order herein, see 512 U. S. 1277.]

No. D–1465. IN RE DISBARMENT OF GOODMAN. It is ordered that Lennard S. Goodman, of New York, N. Y., be suspended from the practice of law in this Court and that a rule 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–1466. IN RE DISBARMENT OF WALSH. It is ordered that Arthur Beauchesne Walsh, of Littleton, Colo., be suspended from the practice of law in this Court and that a rule 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. 94–13. KANSAS DEPARTMENT OF CORRECTIONS *v.* BRINKMAN ET AL., *ante*, p. 927. Motion of respondents for attorney's fees and costs denied without prejudice to refiling in the United States District Court for the District of Kansas.

No. 94–251. UNITED STATES *v.* ROBERTSON. C. A. 9th Cir. [Certiorari granted, *ante*, p. 945.] Motion for appointment of counsel granted, and it is ordered that Glenn Stewart Warren, Esq., of San Diego, Cal., be appointed to serve as counsel for respondent in this case.

No. 94–464. NORFOLK SOUTHERN RAILWAY CO. *v.* NORTH CAROLINA RAILROAD CO. Ct. App. N. C. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 94–5059. JONES *v.* SCHULZE, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF FAMILY SERVICES, ET AL. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 94–6316. IN RE LIGGINS;
No. 94–6341. IN RE SEAGRAVE; and
No. 94–6408. IN RE RAE. Petitions for writs of habeas corpus denied.

No. 94–6299. IN RE GRUBBS. Petition for writ of mandamus denied.

No. 94–6118. IN RE CHAMBERLIN. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 93–1633. SWAN ET AL. *v.* PETERSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 6 F. 3d 1373.

No. 93–1906. TUXEDO UNION FREE SCHOOL DISTRICT ET AL. *v.* CULLEN. C. A. 2d Cir. Certiorari denied. Reported below: 18 F. 3d 96.

No. 93–2098. GRIMES ET AL. *v.* VITALINK COMMUNICATIONS CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1553.

No. 93–6940. ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93–9689. JONSSON, AKA AKABERIAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 15 F. 3d 759.

No. 93–9698. MILLER *v.* UNITED STATES; and
No. 94–5068. HAMILTON, AKA NORDQUIST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 350.

No. 93–9773. PASQUARILLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 F. 3d 682.

No. 94–70. CITY OF LOS ANGELES ET AL. *v.* BRADFORD. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1111.

No. 94–72. SANDLER ASSOCIATES, L. P., ET AL. *v.* BELLSOUTH CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 123.

No. 94–108. COMPARATO, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF CAMPARATO, DECEASED, ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 455.

No. 94–173. DIXON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 256 Ill. App. 3d 771, 628 N. E. 2d 399.

No. 94–207. GRUPO PROTEXA, S. A., ET AL. *v.* ALL AMERICAN MARINE SLIP, A DIVISION OF MARINE OFFICE OF AMERICAN CORP., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 20 F. 3d 1224.

No. 94–212. HOLMBERG ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 19 F. 3d 1062.

No. 94–257. EVANS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DALEY, DECEASED *v.* RESOLUTION TRUST CORPORATION, RECEIVER FOR UNIVERSITY SAVINGS ASSN., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 236.

No. 94–262. HUGHES AIRCRAFT CO., INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 20 F. 3d 974.

No. 94–267. TOTI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 24 F. 3d 806.

No. 94–335. DUNCAN *v.* BLINEBERY, ZONING INSPECTOR, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1472, 634 N. E. 2d 627.

No. 94–371. GOFF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 20 F. 3d 918.

No. 94–444. NEBRASKA EX REL. NELSON, GOVERNOR *v.* CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 77.

No. 94–449. SANTA FE PACIFIC CORP. *v.* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 725.

No. 94–459. BISHOP *v.* GEORGIA STATE BAR. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 241, 442 S. E. 2d 734.

No. 94–463. SCHANKMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–471. BABINSKI *v.* REGUCCI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 555.

No. 94–476. DOUGHTIE ET AL. *v.* FLORIDA DEPARTMENT OF STATE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 4.

No. 94–477. LEISURE TIME PRODUCTIONS, B. V. *v.* TRI-STAR PICTURES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 38.

No. 94–478. TORTUYA *v.* METROPOLITAN LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 249.

No. 94–480. TIMBERLANE REGIONAL SCHOOL DISTRICT *v.* MURPHY, BY AND THROUGH HIS LEGAL GUARDIANS, MURPHY

ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 22 F. 3d 1186.

No. 94–482. ENTERPRISE CONSOLIDATED SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES *v.* LAUDERDALE COUNTY, MISSISSIPPI, SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF EDUCATION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 671.

No. 94–483. SUCCESSION OF RICORD *v.* ENERGY TRANSPORTATION CO. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 236.

No. 94–485. BENIGNI *v.* COWLES MEDIA CO., DBA STAR TRIBUNE, ET AL. Ct. App. Minn. Certiorari denied.

No. 94–486. TAHOE KEYS PROPERTY OWNERS' ASSN. *v.* CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 23 Cal. App. 4th 1459, 28 Cal. Rptr. 2d 734.

No. 94–491. WILDBERGER *v.* AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 228, ET AL. Ct. App. D. C. Certiorari denied.

No. 94–495. QUISENBERRY *v.* BERK, TRUSTEE, ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 639 So. 2d 989.

No. 94–498. LINTZ ET AL. *v.* SKIPSKI ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 304.

No. 94–499. GARDNER ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1056.

No. 94–501. HINSHAW *v.* MAHLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–506. TILLMAN-BROWN ET AL. *v.* CITY OF SACRAMENTO ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–516. WILSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 287, 444 S. E. 2d 306.

No. 94–544. ZIESER ET AL. *v.* FARMERS HOME ADMINISTRATION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 572.

No. 94–582. SHONG-CHING TONG *v.* GENERAL DYNAMICS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–587. CHOW ET UX. *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 245.

No. 94–594. NASH *v.* HALLIBURTON CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1043.

No. 94–598. ROACH *v.* BEAUFORT COUNTY SCHOOLS. Ct. App. N. C. Certiorari denied. Reported below: 114 N. C. App. 330, 443 S. E. 2d 339.

No. 94–601. MUMMAU *v.* MUMMAU. Super. Ct. Pa. Certiorari denied. Reported below: 432 Pa. Super. 700, 635 A. 2d 214.

No. 94–604. QUINTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1092.

No. 94–606. KOCZAK *v.* SMITH, SECRETARY OF STATE OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1096.

No. 94–611. S&P CO. *v.* YORKSHIRE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 942.

No. 94–653. JACOBS MANUFACTURING CO. *v.* SAM BROWN CO. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1259.

No. 94–5207. DE LA FE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 35.

No. 94–5228. NEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 425.

No. 94–5384. LAMBERT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 94–5480. CARROLL *v.* PHILLIPS. Sup. Ct. N. C. Certiorari denied.

No. 94–5599. TODD *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 140.

No. 94–5771. COPPLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 24 F. 3d 535.

No. 94–5980. REAVES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 639 So. 2d 1.

No. 94–6013. COLLINS *v.* STANISLAUS COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 94–6024. WILLIAMS ET AL. *v.* ARNOLD & ARNOLD. Sup. Ct. Ark. Certiorari denied. Reported below: 315 Ark. 632, 870 S. W. 2d 365.

No. 94–6025. BOWIE *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 625 So. 2d 393.

No. 94–6032. ROUSSOS *v.* BAXLEY ET AL. Ct. App. Md. Certiorari denied. Reported below: 334 Md. 212, 638 A. 2d 753.

No. 94–6036. MCBRIDE *v.* SHARPE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 962.

No. 94–6039. SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 23 Cal. App. 4th 1680, 29 Cal. Rptr. 2d 367.

No. 94–6042. FITZGERALD *v.* GAMBLE, ADMINISTRATOR, MONTANA DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES, CORRECTIONS DIVISION. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 105.

No. 94–6043. ELDRIDGE *v.* KINCHELOE, SUPERINTENDENT, SPRING CREEK CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 130.

No. 94–6050. REYES *v.* THOMAS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1058.

No. 94–6059. LARSON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 94–6063. JOHNSON *v.* PREWITT, COMMISSIONER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 131.

No. 94–6087. YAKICH *v.* MUNICIPAL COURT OF SAN JOSE, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6089. WILLIAMS *v.* STAINER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6100. ALLEN *v.* JOHNSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 566.

No. 94–6101. SNELLING *v.* CHRYSLER MOTORS CORP. ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 872 S. W. 2d 527.

No. 94–6104. BARNETTE *v.* JOHNSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1038.

No. 94–6117. BROWN *v.* BARTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1097.

No. 94–6119. JONES *v.* MICHIGAN DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–6120. BOLLING *v.* SMITH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1038.

No. 94–6121. BROWN *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–6124. MEADE-STEPHENS *v.* SCHOOL DISTRICT OF THE CITY OF JERSEY CITY, HUDSON COUNTY. Sup. Ct. N. J. Certiorari denied. Reported below: 137 N. J. 167, 644 A. 2d 614.

No. 94–6126. MCFADDEN *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–6127. REYES *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 83 N. Y. 2d 945, 638 N. E. 2d 961.

No. 94–6128. MEEKS *v.* DEWITT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 538.

No. 94–6129. LONDON *v.* HAWS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 569.

No. 94–6130. RICHARDSON *v.* MCBRIDE, SUPERINTENDENT, WESTVILLE CORRECTIONAL CENTER, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 430.

No. 94–6138. BRANCH *v.* KEOHANE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94–6149. MOLINA *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 125 Idaho 637, 873 P. 2d 891.

No. 94–6170. BARTLETT *v.* ORTIZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 104.

No. 94–6172. BURRESS *v.* PRESBYTERIAN CHURCH ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–6205. KNAPP *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 451.

No. 94–6258. SCHOMER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 94–6272. BECTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 24 F. 3d 242.

No. 94–6302. ALLEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 24 F. 3d 1180.

No. 94–6306. SHACKLEFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–6309. PINOCHET *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 49.

No. 94–6313. MYERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1491.

No. 94–6314. PRIETO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 94.

No. 94–6319. HIRATANI *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 632.

No. 94–6320. GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–6321. KRAMM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–6324. BRUNING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 142.

No. 94–6326. BRANCH *v.* UNITED STATES ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 186 Wis. 2d cxxiii, 524 N. W. 2d 144.

No. 94–6327. COUCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 711.

No. 94–6336. ANKOMAH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 118.

No. 94–6339. MALBROUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 624.

No. 94–6346. GALBAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1494.

No. 94–6349. KORANDO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 29 F. 3d 1114.

No. 94–6354. MAYS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 641.

No. 94–6365. MINH DO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 785.

No. 94–6368. ENGLISH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–6375. KINARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 636.

No. 94–6383. WINZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 637.

No. 94–6385. TATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 131.

No. 94–6388. COUNCIL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6389. COLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 32 F. 3d 16.

No. 94–6392. DIGIANNI *v.* SEARS, ROEBUCK & CO. C. A. 2d Cir. Certiorari denied.

No. 94–6396. NOSAIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 35 F. 3d 553.

No. 94–6398. ADAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6401. SANDERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 35 F. 3d 61.

No. 94–6403. HARRIS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6456. RUSSELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–33. CHEVRON U. S. A. INC. *v.* SEA SAVAGE, INC., ET AL.; and

No. 94–220. SEA SAVAGE, INC., ET AL. *v.* CHEVRON U. S. A. INC. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 13 F. 3d 888 and 22 F. 3d 568.

No. 94–479. COOL LIGHT CO., INC. *v.* GTE PRODUCTS CORP. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 24 F. 3d 349.

No. 94–6363. DIXON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 28 F. 3d 1296.

No. 94–6372. CARMICHAEL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 28 F. 3d 1296.

No. 94–236. BABY "RICHARD," AKA BABY BOY JANIKOVA, A MINOR, BY HIS GUARDIAN AD LITEM, O'CONNELL *v.* KIRCHNER; and

No. 94–615. DOE ET UX., ADOPTIVE PARENTS OF BABY BOY JANIKOVA *v.* KIRCHNER, BIOLOGICAL FATHER OF BABY BOY JANIKOVA. Sup. Ct. Ill. Motion of DeBoer Committee for Children's Rights et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 159 Ill. 2d 347, 638 N. E. 2d 181.

No. 94–454. KENTUCKY *v.* LINEHAN. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 878 S. W. 2d 8.

No. 94–470. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* STARR. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 23 F. 3d 1280.

No. 94–466. DIAMOND SHAMROCK REFINING & MARKETING CO. *v.* NUECES COUNTY APPRAISAL DISTRICT ET AL. Sup. Ct. Tex. Motions of American Petroleum Institute, Institute of Property Taxation, and General Motors Corp. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 876 S. W. 2d 298.

No. 94–490. ARKANSAS EDUCATIONAL TELEVISION COMMISSION *v.* FORBES. C. A. 8th Cir. Motion of Association of America's Public Television Stations et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 22 F. 3d 1423.

No. 94–494. BRISTOL-MYERS SQUIBB CO. *v.* ZENITH LABORATORIES, INC. C. A. Fed. Cir. Motion of Hoffman-La Roche Inc. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 19 F. 3d 1418.

Rehearing Denied

No. 93–9152. VEY *v.* COLVILLE ET AL., *ante*, p. 834;

No. 93–9214. BOWEN *v.* KERNAN, WARDEN, ET AL., *ante*, p. 836;

No. 93–9308. GIBBS *v.* OKLAHOMA DEPARTMENT OF HUMAN SERVICES, AFFIRMATIVE ACTION UNIT, *ante*, p. 840;

No. 93–9517. VENERI *v.* DOMOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, *ante*, p. 851;

No. 93–9660. HENSLER *v.* UNITED STATES, *ante*, p. 859;

No. 94–5029. PIZZO *v.* RISINGER, *ante*, p. 880;

No. 94–5256. IN RE MONTGOMERY, *ante*, p. 806;

No. 94–5266. SAUNDERS *v.* CITY OF BEVERLY ET AL., *ante*, p. 893;

No. 94–5364. WARREN *v.* COLE, *ante*, p. 898;

No. 94–5420. ARNSTEIN *v.* UNITED STATES, *ante*, p. 900;

No. 94–5464. AMSDEN *v.* PROFESSIONAL CONDUCT COMMITTEE, NEW HAMPSHIRE SUPREME COURT, *ante*, p. 902;

No. 94–5546. ADAIR *v.* UNITED STATES ET AL., *ante*, p. 906; and

No. 94–5591. BERCOVICI *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 908. Petitions for rehearing denied.

NOVEMBER 14, 1994

Certiorari Granted—Vacated and Remanded

No. 94–112. HARLESTON ET AL. *v.* JEFFRIES. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Waters* v. *Churchill*, 511 U. S. 661 (1994). Reported below: 21 F. 3d 1238.

No. 94–5798. STERLING *v.* SCOTT, 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 *McFarland* v. *Scott*, 512 U. S. 849 (1994). Reported below: 26 F. 3d 29.

Miscellaneous Orders

No. ———. VDA DE MENDOZA ET AL. *v.* UNITED STATES. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [*ante*, p. 802] denied.

No. ———. MCNAMARA *v.* UNITED STATES. Motion to direct the Clerk to file an application and present it to JUSTICE SCALIA denied.

No. D–1450. IN RE DISBARMENT OF KARCH. Disbarment entered. [For earlier order herein, see 512 U. S. 1281.]

No. D–1451. IN RE DISBARMENT OF LINDER. Disbarment entered. [For earlier order herein, see 512 U. S. 1282.]

No. D–1452. IN RE DISBARMENT OF MITWOL. Disbarment entered. [For earlier order herein, see 512 U. S. 1282.]

No. D–1453. IN RE DISBARMENT OF ZELMAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1282.]

No. D–1456. IN RE DISBARMENT OF FREEDMAN. Disbarment entered. [For earlier order herein, see 512 U. S. 1282.]

No. D–1467. IN RE DISBARMENT OF WILSON. It is ordered that Grafton B. Wilson II, of Gainesville, Fla., be suspended from the practice of law in this Court and that a rule 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–1468. IN RE DISBARMENT OF LAUDANI. It is ordered that A. David Laudani, of Eastpointe, Mich., be suspended from the practice of law in this Court and that a rule 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. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and expenses granted, and the River Master is awarded a total of $972 for the period July 1 through September 30, 1994, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 803.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for award of compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $180,833.83 for the period April 1 through September 30, 1994, to be paid as follows: 30% to be paid by each Nebraska and Wyoming, 15% to be paid by Colorado, and 25% to be paid by the United States. [For earlier order herein, see, *e. g.*, *ante*, p. 923.]

No. 121, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Reply briefs, if any, may be filed by the parties within 30 days. [For earlier order herein, see, *e. g.*, *ante*, p. 804.]

No. 93–1318. INTERSTATE COMMERCE COMMISSION *v.* TRANSCON LINES ET AL. C. A. 9th Cir. [Certiorari granted, 511 U. S. 1029.] Motion of respondents for leave to file a supplemental brief after argument granted.

No. 93–1783. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR *v.* NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. ET AL. C. A. 4th Cir. [Certiorari granted, 512 U. S. 1287.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 93–9082. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE CO. ET AL. C. A. 3d Cir.;

No. 93–9444. IN RE GAYDOS;

No. 93–9577. GAYDOS *v.* CHERTOFF, FORMER UNITED STATES ATTORNEY, ET AL. C. A. 3d Cir.;

No. 93–9618. IN RE GAYDOS;

No. 94–5018. IN RE GAYDOS; and

No. 94–5070. IN RE GAYDOS. Motions of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 924] denied.

No. 93–9122. RODENBAUGH *v.* OTT (two cases). C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 94–5291. BAASCH *v.* REYER ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 94–5860. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. (two cases). C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 945] denied.

No. 94–203. MORSE ET AL. *v.* REPUBLICAN PARTY OF VIRGINIA ET AL. Appeal from D. C. W. D. Va. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 94–5198. IN RE DANCY;

No. 94–6103. IN RE DIGIANNI; and

No. 94–6228. IN RE MOOREHEAD. Petitions for writs of mandamus denied.

No. 94–5865. IN RE COLLIER;

No. 94–5867. IN RE MAGEE; and

No. 94–5894. IN RE HIGGINS. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 94–167. GUTIERREZ DE MARTINEZ ET AL. *v.* LAMAGNO ET AL. C. A. 4th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 23 F. 3d 402.

No. 94–500. COMMISSIONER OF INTERNAL REVENUE *v.* SCHLEIER ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 26 F. 3d 1119.

Certiorari Denied

No. 93–8521. FLEENOR *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 622 N. E. 2d 140.

No. 93–9155. KIMBALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 54.

No. 93–9358. HALL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 157 Ill. 2d 324, 626 N. E. 2d 131.

No. 93–9674. HEIDEMANN *v.* YOUNG. Sup. Ct. Fla. Certiorari denied. Reported below: 632 So. 2d 1026.

No. 93–9699. IN RE HEAD (two cases). C. A. 4th Cir. Certiorari denied. Reported below: 19 F. 3d 1429.

No. 93–9748. HALL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1184.

No. 93–9790. BOROWY *v.* BASS, PLC, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1184.

No. 94–249. ROWE *v.* DEBRUYN, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 17 F. 3d 1047.

No. 94–315. BILLING ET AL. *v.* RAVIN, GREENBERG & ZACKIN, P. A., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 1242.

No. 94–327. BEUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1116.

No. 94–366. UNARCO BLOOMINGTON FACTORY WORKERS *v.* UNR INDUSTRIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 20 F. 3d 766.

No. 94–374. WEBER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 140.

No. 94–396. WIZBOWSKI ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1111.

No. 94–475. EARTH ISLAND INSTITUTE, MARINE MAMMAL FUND, ET AL. *v.* BROWN, SECRETARY OF COMMERCE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 76.

No. 94–504. YEOMAN ET AL. *v.* KENTUCKY REVENUE CABINET ET AL.; and

No. 94–525. SMITH ET AL. *v.* KENTUCKY REVENUE CABINET ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 875 S. W. 2d 873.

No. 94–508. OPTIMAL DATA CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 138.

No. 94–509. MDK, INC. *v.* MIKE'S TRAIN HOUSE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 116.

No. 94–510. ZEKARIA REALTY, INC. *v.* OCEAN COUNTY, NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 271 N. J. Super. 280, 638 A. 2d 859.

No. 94–515. MITCHELL ET AL. *v.* AMARILLO HOSPITAL DISTRICT ET AL. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 855 S. W. 2d 857.

No. 94–521. VERNON *v.* CITY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 1385.

No. 94–523. DAVIS, PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVIS, ET AL. *v.* BENDER SHIPBUILDING & REPAIR CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 426.

No. 94–528. HAYDOO ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 133.

No. 94–530. SHAFFER, SECRETARY OF STATE OF NEW YORK *v.* NEW YORK STATE ASSOCIATION OF REALTORS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 834.

No. 94–531. AUGUSTUS ET AL. *v.* LOUISIANA, THROUGH ITS GOVERNOR, EDWARDS, ET AL. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 636 So. 2d 1218.

No. 94–532. ANDREW WEIR SHIPPING LTD., FKA BANK LINE LTD., ET AL. *v.* BOWERS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 800.

No. 94–536. LOUISIANA-PACIFIC CORP. *v.* ORJIAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 31 F. 3d 995.

No. 94–543. DoPadre *v.* DoPadre. Ct. App. Ariz. Certiorari denied.

No. 94–545. Worrell *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 94–546. Subafilms, Ltd., et al. *v.* United Artists Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 1088.

No. 94–547. Chambers *v.* American Trans Air, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 17 F. 3d 998.

No. 94–548. Knight *v.* Mingledorff, Alabama Commissioner of Revenue. Ct. Civ. App. Ala. Certiorari denied. Reported below: 645 So. 2d 372.

No. 94–550. DeWeerth *v.* Baldinger et al. C. A. 2d Cir. Certiorari denied. Reported below: 38 F. 3d 1266.

No. 94–551. Harris *v.* City of Akron et al. C. A. 6th Cir. Certiorari denied. Reported below: 20 F. 3d 1396.

No. 94–553. Meche *v.* Meche. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 635 So. 2d 614.

No. 94–556. Moore *v.* Local Union 569, International Brotherhood of Electrical Workers, et al. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 107.

No. 94–561. Lowry *v.* Lewis, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 344.

No. 94–565. Athmann et al. *v.* North Slope Borough. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 108.

No. 94–567. Duffy *v.* District Board of Trustees, Miami-Dade Community College. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1097.

No. 94–577. Islamic Republic of Iran *v.* Pahlavi et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–585. Jarvis *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 97.

No. 94–586. JOHNSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 101.

No. 94–589. LEBLANC ET VIR *v.* MEZA ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 620 So. 2d 521.

No. 94–602. HENDERSON *v.* KESSLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1209.

No. 94–620. BUCHBINDER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 94–629. DASS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–639. MCKENNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–641. SHIELDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 137.

No. 94–656. TRAXLER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 39 M. J. 476.

No. 94–663. CASAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 788.

No. 94–678. DADDONA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 34 F. 3d 163.

No. 94–679. SCOTT *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 518 N. W. 2d 347.

No. 94–696. MENZER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 29 F. 3d 1223.

No. 94–700. THOMAS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 634.

No. 94–702. KASSOUF ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–5196. STEPHENS *v.* THOMAS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 498.

No. 94–5202. CASHIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1221.

No. 94–5252. LUIS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 625 N. E. 2d 506.

No. 94–5258. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–5530. ZEIGLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 486.

No. 94–5551. SINGLETON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 26 F. 3d 233.

No. 94–5734. CARTER *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 26 F. 3d 697.

No. 94–5769. BAILEY *v.* BAILEY. Ct. Sp. App. Md. Certiorari denied. Reported below: 97 Md. App. 750.

No. 94–5815. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5871. BROWN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 871 P. 2d 56.

No. 94–5907. JONES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 336 N. C. 229, 443 S. E. 2d 48.

No. 94–5913. POLLARD *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 887.

No. 94–5969. PENDER *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1426.

No. 94–6021. RIDDLE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 314 S. C. 1, 443 S. E. 2d 557.

No. 94–6088. TAYLOR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 638 So. 2d 30.

No. 94–6116. TAL-MASON *v.* KERN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–6122. CALIFORRNIAA *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 94–6123. ANDERSON *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–6131. SEATON-EL *v.* ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 94–6137. C. B. *v.* VERMONT DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES. Sup. Ct. Vt. Certiorari denied. Reported below: 162 Vt. 229, 647 A. 2d 1001.

No. 94–6140. RAY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–6148. STERLING *v.* HAWLEY ET AL. (two cases). C. A. 6th Cir. Certiorari denied.

No. 94–6150. CALL *v.* CARLSON ET AL. Ct. App. Minn. Certiorari denied.

No. 94–6158. DEMPSEY *v.* TURNER BROADCASTING SYSTEM ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–6160. CRANNELL *v.* CRANNELL. Sup. Ct. Vt. Certiorari denied. Reported below: 162 Vt. 643, 648 A. 2d 664.

No. 94–6168. HENDRIX *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 637 So. 2d 916.

No. 94–6176. RUSHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1042.

No. 94–6178. PHILLIPS *v.* MARYLAND ET AL. Ct. App. Md. Certiorari denied. Reported below: 335 Md. 229, 643 A. 2d 383.

No. 94–6213. IRELAN *v.* UNITED STATES; and
No. 94–6282. PEDRAZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 27 F. 3d 1515.

No. 94–6217. DORRI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 888.

No. 94–6222. GREEN *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 36 F. 3d 1108.

No. 94–6229. TODD *v.* WALL, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–6232. PRATT *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 125 Idaho 594, 873 P. 2d 848.

No. 94–6241. GREEN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–6271. BRACEWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1174.

No. 94–6278. ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1407.

No. 94–6279. WALLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 572.

No. 94–6284. RANGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1049.

No. 94–6304. GOMEZ *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 126 Idaho 83, 878 P. 2d 782.

No. 94–6325. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 131.

No. 94–6329. STEPHENS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 23 F. 3d 553.

No. 94–6330. WILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 345.

No. 94–6332. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1212.

No. 94–6334. BRANDT *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 126 Idaho 101, 878 P. 2d 800.

No. 94–6338. PASTO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6344. BERMUDEZ *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 29 F. 3d 645.

No. 94–6352. NICHOLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1016.

No. 94–6353. MCKINNON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 644 A. 2d 438.

No. 94–6355. ROSEBAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1175.

No. 94–6360. LAZOR *v.* SPERRY RAND CORP., UNIVAC DIVISION (NKA UNISYS CORP.). C. A. 3d Cir. Certiorari denied.

No. 94–6362. CHUKUNDAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 131.

No. 94–6366. BILLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 F. 3d 62.

No. 94–6367. DUFFY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 625.

No. 94–6371. KOSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–6374. CALDERON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6379. WERHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 637.

No. 94–6380. CARTER *v.* AMTRAK. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1097.

No. 94–6384. SEXTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 336 N. C. 321, 444 S. E. 2d 879.

No. 94–6394. PETERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 28 F. 3d 114.

No. 94–6399. BUCHANAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 639.

No. 94–6407. COY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 629.

No. 94–6411. ORR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–6412. POWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 28.

No. 94–6419. SATHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 821.

No. 94–6420. INGRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6421. FORDE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 30 F. 3d 127.

No. 94–6422. HILTON, AKA MONTANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 115.

No. 94–6423. SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 24 F. 3d 1259.

No. 94–6428. CASTANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1491.

No. 94–6430. CHEEKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 118.

No. 94–6431. PATTERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 1239.

No. 94–6432. TILLMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–6436. LUCAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 636.

No. 94–6437. MADRID *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 1269.

No. 94–6444. MORALES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 34 F. 3d 44.

No. 94–6445. COLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 641.

No. 94–6446. COYNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 124.

No. 94–6447. BRANCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1074.

No. 94–6448. MALDONADO CONTRERAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–6453. DUNCAN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 638 So. 2d 1332.

No. 94–6454. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 250.

No. 94–6457. BURGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6458. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6459. BRASLAVSKY *v.* BOARD OF TRUSTEES OF UNIVERSITY OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–6461. SHINABERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 55.

No. 94–6462. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 128.

No. 94–6464. CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 572.

No. 94–6466. DURAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–6467. DUNKINS *v.* UNITED STATES; and
No. 94–6487. FISHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 574.

No. 94–6468. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–6469. ANDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–6470. JOYCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 1035.

No. 94–6472. PARKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 25 F. 3d 114.

No. 94–6474. OSORIO-DE HOLGUIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–6476. MASTROGIOVANNI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–6483. EINSPAHR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 35 F. 3d 505.

No. 94–6489. GOETSCH *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 186 Wis. 2d 1, 519 N. W. 2d 634.

No. 94–6496. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 540.

No. 94–6497. KENNEDY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–6499. SONAGERE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 51.

No. 94–6504. CALVILLO *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1492.

No. 94–6505. CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 1009.

No. 94–6508. TANGEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 950.

No. 94–5610. PORTER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motion of petitioner for leave to file an amendment to petition for writ of certiorari granted. Certiorari denied. Reported below: 14 F. 3d 554.

No. 94–6331. WADLINGTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 28 F. 3d 1296.

Rehearing Denied

No. D–1423. IN RE DISBARMENT OF OKOCHA, 512 U. S. 1284;

No. 93–2056. REICHSTEIN *v.* NALICO INTERNATIONAL CORP. ET AL., *ante*, p. 824;

No. 93–9035. QUIBAN *v.* DEPARTMENT OF VETERANS AFFAIRS, *ante*, p. 918;

No. 93–9416. MARCUM *v.* UNITED STATES, *ante*, p. 845;

No. 93–9436. VOTH *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY, *ante*, p. 846;

No. 93–9516. KARIM-PANAHI *v.* LOS ANGELES POLICE DEPARTMENT ET AL., *ante*, p. 851;

No. 93–9523. GOCKEN *v.* WASHINGTON, *ante*, p. 851;
No. 93–9573. JIMENEZ *v.* GENERAL MOTORS CORP. ET AL., *ante*, p. 854;
No. 93–9581. LLOYD *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 854;
No. 93–9762. RUSSELL *v.* UNITED STATES, *ante*, p. 864;
No. 93–9764. BESINGA *v.* UNITED STATES ET AL., *ante*, p. 864;
No. 93–9784. IN RE CRAWFORD, *ante*, p. 806;
No. 94–114. DAVIS *v.* NEW JERSEY BELL, *ante*, p. 871;
No. 94–143. NELSON ET AL. *v.* MASSACHUSETTS ET AL., *ante*, p. 872;
No. 94–5143. GUINN *v.* COOPER, WARDEN, ET AL., *ante*, p. 887;
No. 94–5177. BLEICKEN *v.* PERKINS ET AL., *ante*, p. 889;
No. 94–5242. WILSON *v.* CITY OF BERKELEY ET AL., *ante*, p. 892;
No. 94–5336. IN RE CRUMB, *ante*, p. 805; and
No. 94–5491. GUICHARD *v.* WISNIESKI ET AL., *ante*, p. 903. Petitions for rehearing denied.

No. 93–115. NYSA–ILA WELFARE FUND ET AL. *v.* DUNSTON, NEW JERSEY COMMISSIONER OF HEALTH, ET AL., 510 U. S. 944. Motion for leave to file petition for rehearing denied.

No. 93–738. OBERLE, AKA JONES *v.* UNITED STATES, 510 U. S. 1025. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Motion for leave to file petition for rehearing denied.

NOVEMBER 15, 1994

Miscellaneous Order

No. 94–167. GUTIERREZ DE MARTINEZ ET AL. *v.* LAMAGNO ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 998.] Michael K. Kellogg, Esq., of Washington, D. C., a member of the Bar of this Court, is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

NOVEMBER 21, 1994

Dismissal Under Rule 46

No. 94–670. CALDWELL ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 32 F. 3d 573.

NOVEMBER 28, 1994

Certiorari Granted—Vacated and Remanded

No. 94–392. WARD *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767 (1994). Reported below: 870 S. W. 2d 659.

No. 94–428. RISTOW ET UX. *v.* SOUTH CAROLINA PORTS AUTHORITY ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hess* v. *Port Authority Trans-Hudson Corporation*, *ante*, p. 30. Reported below: 27 F. 3d 84.

Miscellaneous Orders

No. ——. LAUGHTER *v.* BELK-SIMPSON; and
No. ——. MESTER *v.* SAIKI ET AL. Motions for reconsideration of order denying leave to file petitions for writs of certiorari out of time [*ante*, p. 802] denied.

No. ——. LEE ET AL. *v.* FLIGHTSAFETY SERVICES ET AL.;
No. ——. NICHOLSON ET AL. *v.* COONEY, SECRETARY OF STATE OF MONTANA, ET AL.;
No. ——. MENDLOW *v.* UNIVERSITY OF WASHINGTON ET AL.; and
No. ——. KERSH *v.* DEVEN LITHOGRAPHERS, INC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. ——. MORETTI *v.* RED ROOF INN ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time and without a final judgment from the highest court of the State in which a judgment could be had denied.

No. A–292. IN RE APPLICATION OF HIRSCH. Dist. Ct. Ore., Josephine County. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A–313. BEDDOE *v.* UNITED STATES ET AL. D. C. E. D. Cal. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. A–344 (94–892). C. W., BY HER GUARDIAN AD LITEM, MCKINLEY *v.* WASIEK. Super. Ct. Pa. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–1462. IN RE DISBARMENT OF O'KEEFE. A response to the rule to show cause having been filed, it is ordered that the rule to show cause is hereby discharged, and the order heretofore entered October 11, 1994 [*ante,* p. 923], suspending respondent from the practice of law in this Court is vacated.

No. 93–1202. BRUNWASSER *v.* STEINER, 510 U. S. 1195. Motion of petitioner to vacate order of May 2, 1994 [511 U. S. 1067], denied.

No. 93–1841. ADARAND CONSTRUCTORS, INC. *v.* PENA, SECRETARY OF TRANSPORTATION, ET AL. C. A. 10th Cir. [Certiorari granted, 512 U. S. 1288.] Motion of L. S. Lee, Inc., et al. for leave to file a brief as *amici curiae* out of time granted.

No. 93–1935. CURTISS-WRIGHT CORP. *v.* SCHOONEJONGEN ET AL. C. A. 3d Cir. [Certiorari granted, 512 U. S. 1288.] Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted.

No. 93–7927. KYLES *v.* WHITLEY, WARDEN. C. A. 5th Cir. [Certiorari granted, 511 U. S. 1051.] Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 94–3. REYNOLDSVILLE CASKET CO. ET AL. *v.* HYDE. Sup. Ct. Ohio. [Certiorari granted, *ante,* p. 921.] Motion of Dalkon Shield Claimants Trust for leave to file a brief as *amicus curiae* granted.

No. 94–18. MASTROBUONO ET AL. *v.* SHEARSON LEHMAN HUTTON, INC., ET AL. C. A. 7th Cir. [Certiorari granted, *ante,* p. 921.] Motions of American Association of Limited Partners and Public Investors Arbitration Bar Association for leave to file briefs as *amici curiae* granted.

No. 94–6263. DEGGENDORF ET AL. *v.* MICHIGAN. Ct. App. Mich.; and

No. 94–6293. SAMPANG *v.* DETRICK. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 19, 1994, within which to

pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–6267. FERTEL-RUST *v.* MILWAUKEE POLICE DEPARTMENT ET AL. C. A. 7th Cir.;

No. 94–6268. FERTEL-RUST *v.* AMBASSADOR HOTEL ET AL. C. A. 7th Cir.; and

No. 94–6340. IN RE WHITAKER. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until December 19, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–6627. IN RE WILSON. C. A. 8th Cir. Petition for writ of common-law certiorari denied.

No. 94–6621. IN RE GRANADA. Petition for writ of habeas corpus denied.

No. 94–628. IN RE TAYLOR ET AL.; and

No. 94–6494. IN RE CHAUDHARY. Petitions for writs of mandamus denied.

No. 94–588. IN RE BIGGINS. C. A. 1st Cir. Petition for writ of mandamus and/or certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 30 F. 3d 126.

Certiorari Granted

No. 94–270. UNITED STATES *v.* AGUILAR. C. A. 9th Cir. Certiorari granted. Reported below: 21 F. 3d 1475.

No. 94–590. VERNONIA SCHOOL DISTRICT 47J *v.* ACTON ET UX., GUARDIANS AD LITEM FOR ACTON. C. A. 9th Cir. Certiorari granted. Reported below: 23 F. 3d 1514.

No. 94–562. WILTON ET AL. *v.* SEVEN FALLS CO. ET AL. C. A. 5th Cir. Certiorari granted. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 41 F. 3d 934.

No. 94–623. VIMAR SEGUROS Y REASEGUROS, S. A. *v.* M/V SKY REEFER ET AL. C. A. 1st Cir. Motion of Maritime Law Association of the United States for leave to file a brief as *amicus*

curiae granted. Certiorari granted. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 29 F. 3d 727.

No. 94–5707. WILSON *v.* ARKANSAS. Sup. Ct. Ark. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 317 Ark. 548, 878 S. W. 2d 755.

Certiorari Denied. (See also Nos. 94–6627 and 94–588, *supra.*)

No. 93–1958. FELDMAN *v.* BAHN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 12 F. 3d 730.

No. 93–7963. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1223.

No. 93–8910. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1544.

No. 93–9295. WALDRON *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 511.

No. 93–9484. RICHARDSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–9645. LAWRENCE *v.* RILEY, SECRETARY OF EDUCATION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1232.

No. 93–9758. FERRAN ET AL. *v.* TOWN OF NASSAU, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 11 F. 3d 21.

No. 94–22. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1111.

No. 94–32. ALLSTATE INSURANCE CO. *v.* DEUS ET AL.; and
No. 94–427. DEUS *v.* ALLSTATE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 506.

No. 94–44. BELKNAP *v.* HENDERSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1305.

No. 94–161. HEUER *v.* UNITED STATES SECRETARY OF STATE. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 424.

No. 94–231. ANDERSON ET AL. *v.* UNITED STATES; and
No. 94–243. TILLEY ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 295.

No. 94–280. GLEAVE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 16 F. 3d 1313.

No. 94–342. GAEV *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 24 F. 3d 473.

No. 94–362. ACEVEDO-VILLALOBOS ET AL. *v.* HERNANDEZ ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 22 F. 3d 384.

No. 94–364. A. MICHAEL'S PIANO, INC. *v.* FEDERAL TRADE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 18 F. 3d 138.

No. 94–365. GRANT *v.* LONE STAR CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 649.

No. 94–368. VERNON HOME HEALTH CARE AGENCY, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 693.

No. 94–370. FUNDERBURG *v.* UNITED STATES RAILROAD RETIREMENT BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 23 F. 3d 400.

No. 94–390. AMERICAN WATER DEVELOPMENT, INC. *v.* CITY OF ALAMOSA ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 874 P. 2d 352.

No. 94–399. HOBLEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 272, 637 N. E. 2d 992.

No. 94–400. CATERAIR INTERNATIONAL *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1114.

No. 94–404. ROTH *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 22 F. 3d 1108.

No. 94–405. VASTOLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 25 F. 3d 164.

No. 94–411. PIPING OF OHIO, INC. *v.* REICH, SECRETARY OF LABOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1049.

No. 94–440. SETOLA ET AL. *v.* BOB SCHMIDT CHEVROLET, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–502. AFANEH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–513. CONSERVOLITE, INC. *v.* WIDMAYER. C. A. Fed. Cir. Certiorari denied. Reported below: 21 F. 3d 1098.

No. 94–563. DAVIS *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 94–566. FREEMAN *v.* JOHNSTON. Ct. App. N. Y. Certiorari denied. Reported below: 84 N. Y. 2d 52, 637 N. E. 2d 268.

No. 94–569. CASA VEERKAMP, S. A. DE C. V., ET AL. *v.* KREIMERMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 634.

No. 94–570. MICHIGAN BELL TELEPHONE CO. *v.* DEPARTMENT OF TREASURY OF MICHIGAN ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 445 Mich. 470, 518 N. W. 2d 808.

No. 94–571. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* MANGINI. Sup. Ct. Cal. Certiorari denied. Reported below: 7 Cal. 4th 1057, 875 P. 2d 73.

No. 94–573. MELLO ET UX. *v.* WOODHOUSE ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 110 Nev. 366, 872 P. 2d 337.

No. 94–574. JOHN G. AND MARIE STELLA KENEDY MEMORIAL FOUNDATION *v.* MAURO, COMMISSIONER, GENERAL LAND OFFICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 667.

No. 94–576. ROBERTSON, CHAPTER 7 TRUSTEE OF INTERNATIONAL NUTRONICS, INC. *v.* ISOMEDIX, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 965.

No. 94–578. DISTRICT OF COLUMBIA ET AL. *v.* LAMPKIN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 27 F. 3d 605.

No. 94–581. Foss Maritime Co. *v.* Ettinger. C. A. 9th Cir. Certiorari denied.

No. 94–593. Hopping *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 637 N. E. 2d 1294.

No. 94–595. ILQ Investments, Inc., et al. *v.* City of Rochester. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 1413.

No. 94–597. Myers *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1122.

No. 94–599. Rhinehart et al. *v.* Seattle Times et al. Ct. App. Wash. Certiorari denied. Reported below: 69 Wash. App. 1067.

No. 94–603. Black *v.* J. I. Case. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 568.

No. 94–607. Eder *v.* ITT Corp. et al. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1039.

No. 94–609. Pulasty *v.* New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 136 N. J. 356, 642 A. 2d 1392.

No. 94–610. Branson *v.* Haber. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 244.

No. 94–614. Yagman & Yagman, P. C. *v.* Gates et al. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 73.

No. 94–616. Zapata Protein (USA), Inc., fka Zapata Haynie Corp. *v.* Butler. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 633 So. 2d 1274.

No. 94–619. Vemco, Inc. *v.* Camardella et al. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 129.

No. 94–621. Spartanburg Steel Products, Inc. *v.* Constant. Sup. Ct. S. C. Certiorari denied. Reported below: 316 S. C. 86, 447 S. E. 2d 194.

No. 94–622. Greene *v.* South Carolina Election Commission et al. Sup. Ct. S. C. Certiorari denied. Reported below: 314 S. C. 449, 445 S. E. 2d 451.

No. 94–626. BAKER *v.* BENNETT ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 633 So. 2d 91.

No. 94–632. MAURICE SPORTING GOODS, INC. *v.* MAXWAY CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 980.

No. 94–633. BELL *v.* SUPERMARKETS GENERAL CORP., T/A PATHMARK. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 555.

No. 94–635. CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA ET AL. *v.* TRI-CAPITAL CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 849.

No. 94–640. SCANLON *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 251, 443 S. E. 2d 830.

No. 94–643. MCLAREN *v.* HARLAN. Ct. App. Wash. Certiorari denied. Reported below: 72 Wash. App. 1009.

No. 94–646. RITTER, BANKRUPTCY TRUSTEE, SUBSTITUTE FOR CONDREY *v.* HOWARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 624.

No. 94–651. EXPORTADORA DE SAL, S. A. DE C. V. *v.* SUGIMOTO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1309.

No. 94–658. HODGE ET AL. *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 31 F. 3d 157.

No. 94–659. D. G. *v.* T. M. N. ET AL. Ct. App. Kan. Certiorari denied. Reported below: 19 Kan. App. 2d 574, 874 P. 2d 680.

No. 94–667. MCLENAGAN *v.* KARNES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 1002.

No. 94–668. MENDENHALL ET AL. *v.* ASTEC INDUSTRIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 1573.

No. 94–669. BADARAYAN *v.* DRAKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1038.

No. 94–676. WILLIAMS ET AL. *v.* PHILLIPS PETROLEUM CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 930.

No. 94–685. MURPHY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 39 M. J. 486.

No. 94–686. ZABKAR *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 97.

No. 94–687. ROSS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 103.

No. 94–698. SHADIAN ET UX. *v.* CARMENITA ASSOCIATES. C. A. 9th Cir. Certiorari denied.

No. 94–707. FULLER *v.* PERRY, SECRETARY OF DEFENSE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 86.

No. 94–710. OKON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 26 F. 3d 1025.

No. 94–711. UNITED MINE WORKERS OF AMERICA, DISTRICT 28 *v.* ISLAND CREEK COAL CO. C. A. 4th Cir. Certiorari denied. Reported below: 29 F. 3d 126.

No. 94–722. CONKLIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1105.

No. 94–726. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 409.

No. 94–727. HEYWARD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 106.

No. 94–736. RICHARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 1458.

No. 94–740. WILSON *v.* CENTRAL FREIGHT LINES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 1119.

No. 94–758. MOBILE MEDEX, INC. *v.* BRAMUCCI, COMMISSIONER OF LABOR OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 558.

No. 94–760. LeDonne *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 1418.

No. 94–777. West *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 586.

No. 94–5062. Yankelevicz *v.* Shalala, Secretary of Health and Human Services. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 9.

No. 94–5380. Lester *v.* Jabe, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 407.

No. 94–5403. Webber *v.* Byers et al. Super. Ct. Pa. Certiorari denied. Reported below: 433 Pa. Super. 625, 636 A. 2d 1224.

No. 94–5416. Cordova *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 94–5451. Brimmer *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 876 S. W. 2d 75.

No. 94–5467. Sumrall *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 148, 442 S. E. 2d 246.

No. 94–5647. Nolley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 80.

No. 94–5792. Villalobos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 1098.

No. 94–5803. Jovanovic et ux. *v.* Stained Glass Overlay, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 138.

No. 94–5853. Kitchen *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 1, 636 N. E. 2d 433.

No. 94–5866. Roman *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 35.

No. 94–5873. Cuartas *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 94–5878. Fair *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 51, 636 N. E. 2d 455.

No. 94–5895. ZIMMERMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 881 S. W. 2d 360.

No. 94–5932. HATFIELD *v.* DAUGHERTY, GARRAD DISTRICT JUDGE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1048.

No. 94–6009. LAVOLD *v.* CHANG ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–6056. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 953.

No. 94–6111. JOHNSTON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 184 Wis. 2d 794, 518 N. W. 2d 759.

No. 94–6142. PLATSKY *v.* STUDEMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 102.

No. 94–6151. HOLMES *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 622 So. 2d 877.

No. 94–6152. ETEMAD *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6157. MILLER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6163. REISS *v.* CLARKSTOWN ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–6164. LYONS *v.* KIERNAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 131.

No. 94–6166. ABIDEKUN *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–6174. KIRAKOSSIAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6179. ANDREWS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 682, 641 A. 2d 1218.

No. 94–6180. CHILDS *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 876 S. W. 2d 781.

No. 94–6181. SPORTS *v.* VAUGHN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–6184. VINING *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 637 So. 2d 921.

No. 94–6188. BEDFORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6189. BOLENDER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 3d 1547.

No. 94–6200. NENNINGER *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 872 S. W. 2d 589.

No. 94–6201. LOVE *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–6204. CHARLTON *v.* PARAMUS BOARD OF EDUCATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 25 F. 3d 194.

No. 94–6206. KEENAN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 94–6207. IRBY *v.* MACHT ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 184 Wis. 2d 831, 522 N. W. 2d 9.

No. 94–6209. FREEMAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 876 P. 2d 283.

No. 94–6215. ADAMO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 431 Pa. Super. 529, 637 A. 2d 302.

No. 94–6231. LEWIS *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 641.

No. 94–6234. LOPEZ ROJAS *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 132.

No. 94–6239. SHELDON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 7 Cal. 4th 1136, 875 P. 2d 83.

No. 94–6244. HYDRICK *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6247. EDINBYRD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6249. HUTCHINGS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–6250. HARRISON *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6252. KIRBY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 643 So. 2d 587.

No. 94–6254. HOOPER *v.* CARLTON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–6255. SAINTIL *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 637 So. 2d 251.

No. 94–6257. WILLIAMS *v.* BUNNELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 136.

No. 94–6259. WALLACE *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–6264. WALLACE *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–6265. TRAYLOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 37.

No. 94–6266. FIELDS *v.* CITY OF WEST PALM BEACH, FLORIDA; and FIELDS *v.* GRAHAM, MAYOR OF THE CITY OF WEST PALM BEACH, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 632 So. 2d 1026 (first case); 630 So. 2d 1099 (second case).

No. 94–6276. VALDEZ *v.* JOY TECHNOLOGIES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 623.

No. 94–6285. LUCAS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 201 Mich. App. 717, 507 N. W. 2d 5.

No. 94–6286. ROLDAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6288. STORY *v.* KINDT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 402.

No. 94–6290. GUTIERREZ MARQUEZ *v.* GUNN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 632.

No. 94–6291. LARKINS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6292. WUNDERLICH *v.* HUNTER. C. A. 6th Cir. Certiorari denied.

No. 94–6295. SKELLY *v.* HEIDEMANN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 132.

No. 94–6296. STEIN *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 108.

No. 94–6297. HOOPER *v.* MORGAN COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–6303. AMMAR *v.* WELSCH. Ct. Sp. App. Md. Certiorari denied. Reported below: 99 Md. App. 740.

No. 94–6310. RAMOS *v.* COUGHLIN, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–6311. PATTEN *v.* RUTTGER ET AL. Ct. App. Minn. Certiorari denied.

No. 94–6312. OLIVER *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6315. MCCOMBS *v.* COOLEDGE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 563.

No. 94–6318. ESTRELLA *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 36 F. 3d 1108.

No. 94–6322. ESPARZA *v.* JOHNSON, DEPUTY DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, HEALTH SERVICES DIVI-

SION. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1492.

No. 94–6335. CARNELL *v.* REED ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1120.

No. 94–6343. WERNER *v.* BERGEN COUNTY JAIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 125.

No. 94–6345. HERRON-COLE *v.* JETER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 407.

No. 94–6347. GOODWIN *v.* MAZUREK, ATTORNEY GENERAL OF MONTANA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6348. JAMERSON *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–6351. JOHNSON *v.* EPPS. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 566.

No. 94–6358. DIAZ LOPEZ *v.* COMMONWEALTH OIL REFINING CO., INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 29 F. 3d 619.

No. 94–6359. PAYNE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–6364. CHAMBLISS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 48.

No. 94–6370. KIRKPATRICK *v.* STOTTS, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 142.

No. 94–6376. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 640.

No. 94–6377. WORDS *v.* KANSAS. Dist. Ct. Sedgwick County, Kan. Certiorari denied.

No. 94–6381. SINAI *v.* NEW ENGLAND TELEPHONE & TELEGRAPH CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 3 F. 3d 471.

No. 94–6393. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1212.

No. 94–6395. MOSES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–6404. HOLLOWAY *v.* HUNDLEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 627.

No. 94–6406. COOPER *v.* COX ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–6410. MCBRIDE *v.* HEAD ET AL. Sup. Ct. Ga. Certiorari denied.

No. 94–6417. MCAFEE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6426. HOFFMAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 536 Pa. 546, 640 A. 2d 414.

No. 94–6435. OTTO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1395.

No. 94–6440. SMATHERS *v.* GREINER. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1173.

No. 94–6442. RANDALL *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF VOLUSIA COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 639.

No. 94–6450. GREEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6452. GARRETT *v.* PERRY, SECRETARY OF DEFENSE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1098.

No. 94–6473. PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–6490. RAMSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1489.

No. 94–6493. DUBYAK *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 94–6495. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 23.

No. 94–6498. FALCONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–6502. EARLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 140.

No. 94–6509. LUCAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 397.

No. 94–6511. ROSAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1217.

No. 94–6514. MOODY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–6515. MUNOZ-SOLARTE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1217.

No. 94–6516. PEDRICK *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 642 So. 2d 756.

No. 94–6519. BURGESS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–6520. DAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–6521. CRAVEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1211.

No. 94–6522. NICHOLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1098.

No. 94–6529. CASTRO GAXIOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6530. PFEIFFER *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6531. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 439.

No. 94–6533. HEATON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 629.

No. 94–6534. JAMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 32 F. 3d 569.

No. 94–6535. FURUTANI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1109.

No. 94–6536. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 30 F. 3d 276.

No. 94–6539. SAUER *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 132.

No. 94–6540. VLADIMIROV *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 49.

No. 94–6542. DAHLHEIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6543. ALLBRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1494.

No. 94–6544. GARZA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1494.

No. 94–6546. DAVILA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 640.

No. 94–6548. WEEKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 605.

No. 94–6549. TREVINO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 563.

No. 94–6550. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 568.

No. 94–6551. SANTOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–6552. DENOYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6554. CARDENAS-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1494.

No. 94–6555. BENTLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 29 F. 3d 1073.

No. 94–6558. HART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–6561. LINDSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 68.

No. 94–6562. RICHARDSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–6563. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 542.

No. 94–6564. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–6565. RUBIO-VASQUES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–6566. RINCON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 921.

No. 94–6567. O'BANNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1495.

No. 94–6572. HUGHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–6573. HARDISON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 110 Nev. 1542, 893 P. 2d 404.

No. 94–6576. HUMPHREY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–6577. FLORES-JUAREZ, AKA GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6583. HIEBERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 1005.

No. 94–6587. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1060.

No. 94–6588. HENRY *v.* SPECKARD, SUPERINTENDENT, GROVELAND CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1209.

No. 94–6590. BANDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 1119.

No. 94–6592. WELCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 F. 3d 573.

No. 94–6596. SANCHEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1175.

No. 94–6598. EDELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6600. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–6603. CHONG IN KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 1426.

No. 94–6604. HUGHES, AKA WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1496.

No. 94–6606. JEFFERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 569.

No. 94–6609. CAMARGO-VERGARA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1075.

No. 94–6611. ARCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1494.

No. 94–6616. PABLO TURRUELLAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6625. STRICKLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 110.

No. 94–6629. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–6631. TRACY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 199.

No. 94–6632. TODD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–6635. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 563.

No. 94–6636. GRANGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 557.

No. 94–6637. LINARES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–6638. MCCLAIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1172.

No. 94–6639. MAXWELL ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 1389.

No. 94–6641. OLVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1195.

No. 94–6642. MORRIS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 537 Pa. 417, 644 A. 2d 721.

No. 94–6648. SULEIMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 570.

No. 94–6649. FOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 464.

No. 94–6650. MCDOWELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 32 F. 3d 561.

No. 94–6651. MCALPINE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 32 F. 3d 484.

No. 94–6652. CHESNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–6655. SLAGEL *v.* SHELL OIL REFINERY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 23 F. 3d 410.

No. 94–6659. HOLST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 109.

No. 94–6666. PHILLIPS *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 138 N. J. 265, 649 A. 2d 1285.

No. 94–6668. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 445.

No. 94–6670. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6681. JOHANSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–6684. BESHAW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 94–6687. BAZE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 32 F. 3d 569.

No. 94–6693. FRANKLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 131.

No. 94–6696. SALEMI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1084.

No. 94–6697. VEGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 445.

No. 94–6713. DUDZINSKI *v.* CITY OF LIVONIA, MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 446 Mich. 854, 520 N. W. 2d 152.

No. 94–381. INTERNATIONAL PRIMATE PROTECTION LEAGUE ET AL. *v.* ADMINISTRATORS OF TULANE EDUCATIONAL FUND ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 22 F. 3d 1094.

No. 94–388. ARVEY, HODES, COSTELLO & BURMAN *v.* KLINE ET AL. C. A. 3d Cir. Motions of American Institute of Certified Public Accountants and Business & Financial Lawyers et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 24 F. 3d 480.

No. 94–591. OHIO *v.* SINGFIELD. Ct. App. Ohio, Summit County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 94–592. DOHERTY, DIRECTOR, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY *v.* PENNINGTON. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 22 F. 3d 1376.

No. 94–618. IOWA ET AL. *v.* HOLIDAY INNS FRANCHISING, INC., ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took

no part in the consideration or decision of this petition. Reported below: 29 F. 3d 383.

No. 94–6409 (A–293). OWENS ET UX. *v.* EMC MORTGAGE CORP. Sup. Ct. Ga. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. D–1413. IN RE DISBARMENT OF KILPATRICK, *ante*, p. 803;
No. 93–1441. WALSH *v.* DELAWARE ET AL., *ante*, p. 806;
No. 93–1547. IN RE SMITH, *ante*, p. 807;
No. 93–1679. BRITENBACH *v.* UNITED STATES, *ante*, p. 808;
No. 93–1827. LOKAY *v.* AMERICAN REAL ESTATE CORP., *ante*, p. 810;
No. 93–1840. HUDSON *v.* VARNEY ET AL., *ante*, p. 811;
No. 93–1967. JACKSON *v.* MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY ET AL., *ante*, p. 818;
No. 93–1972. LOPEZ *v.* BEHLES, TRUSTEE; and LOPEZ *v.* BEHLES, TRUSTEE, ET AL., *ante*, p. 818;
No. 93–2020. PERKINS *v.* WESTERN SURETY CO., *ante*, p. 821;
No. 93–2025. SPALETTA *v.* COUNTY OF MENDOCINO EMPLOYEES RETIREMENT ASSN. ET AL., *ante*, p. 821;
No. 93–2096. BONSER *v.* TOWN OF NOTTINGHAM, NEW HAMPSHIRE, *ante*, p. 918;
No. 93–2097. BONSER *v.* TOWN OF NOTTINGHAM, NEW HAMPSHIRE, *ante*, p. 918;
No. 93–8712. LARISCY ET UX. *v.* UNITED STATES, *ante*, p. 828;
No. 93–8843. MOTLEY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 960;
No. 93–9102. CASTRO VASQUEZ *v.* MYERS, WARDEN, *ante*, p. 833;
No. 93–9157. FLEMING *v.* ROCHA, WARDEN, *ante*, p. 834;
No. 93–9160. DOERR *v.* COUNTY OF SAN BERNARDINO, CALIFORNIA, ET AL., *ante*, p. 834;
No. 93–9195. RICE *v.* UNITED STATES, *ante*, p. 836;
No. 93–9203. GRANT *v.* OHIO, *ante*, p. 836;
No. 93–9269. PREUSS *v.* DISTRICT OF COLUMBIA, *ante*, p. 839;
No. 93–9270. BAKER *v.* MILLER ET AL., *ante*, p. 839;
No. 93–9275. HAMILTON *v.* MORRISON, WARDEN, ET AL., *ante*, p. 839;

No. 93–9288. LEONARD *v.* ROSE'S DEPARTMENT STORE, *ante*, p. 839;

No. 93–9289. MELENDEZ *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL., *ante*, p. 839;

No. 93–9296. BAKER *v.* KELLEY ET AL., *ante*, p. 840;

No. 93–9325. LONG *v.* TEXAS, *ante*, p. 841;

No. 93–9339. VINCENT *v.* REYNOLDS MEMORIAL HOSPITAL ET AL., *ante*, p. 841;

No. 93–9375. KNELLER *v.* KNELLER, *ante*, p. 843;

No. 93–9421. DENSMORE *v.* MICHIGAN, *ante*, p. 845;

No. 93–9423. MCLEOD *v.* LOUDOUN COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL., *ante*, p. 845;

No. 93–9428. WILLIAMSON ET AL. *v.* KING COUNTY, WASHINGTON, *ante*, p. 846;

No. 93–9440. RODENBAUGH *v.* CURTO, *ante*, p. 846;

No. 93–9459. ROUNDTREE *v.* MILLER ET AL., *ante*, p. 848;

No. 93–9501. YACKS *v.* JOHNSON, WARDEN, *ante*, p. 850;

No. 93–9544. STEWART *v.* UNITED STATES, *ante*, p. 852;

No. 93–9548. HERRICK *v.* UNITED STATES, *ante*, p. 926;

No. 93–9567. MCCOY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL., *ante*, p. 854;

No. 93–9580. LEE *v.* BENJAMIN FRANKLIN FEDERAL SAVINGS ASSN. ET AL., *ante*, p. 854;

No. 93–9604. LEWIS *v.* THOMPSON, WARDEN, *ante*, p. 856;

No. 93–9612. IN RE FROMAL, *ante*, p. 856;

No. 93–9620. ROGERS *v.* REED-FLEMING ET AL., *ante*, p. 856;

No. 93–9623. TRANTINO *v.* ROTHSTEIN, *ante*, p. 857;

No. 93–9624. BATTEN *v.* OHIO, *ante*, p. 857;

No. 93–9640. RODENBAUGH *v.* SINGER, *ante*, p. 858;

No. 93–9641. QUINTANILLA *v.* ORANGE COUNTY PERSONNEL DIVISION OF SHERIFF CORONER DEPARTMENT ET AL., *ante*, p. 858;

No. 93–9650. AGHA *v.* WEST, SECRETARY OF THE ARMY, ET AL., *ante*, p. 858;

No. 93–9655. FERDIK *v.* MCFADDEN, WARDEN, ET AL., *ante*, p. 858;

No. 93–9662. AGUILAR *v.* NEW MEXICO, *ante*, p. 859;

No. 93–9677. PETTIGREW *v.* UNITED STATES, *ante*, p. 860;

No. 93–9776. AGUILAR *v.* NEW MEXICO, *ante*, p. 865;

No. 94–118. D-LANDCO ET AL. *v.* OKLAHOMA DEPARTMENT OF TRANSPORTATION, *ante*, p. 871;

No. 94–137. SEAL *v.* SEAL, *ante*, p. 872;

No. 94–146. IN RE JOHNSON, *ante*, p. 806;

No. 94–165. SRINIVASAN *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY (RIO HONDO COMMUNITY COLLEGE DISTRICT, REAL PARTY IN INTEREST), *ante*, p. 873;

No. 94–170. ROSENFELD *v.* RIVER PLACE EAST HOUSING CORP., *ante*, p. 874;

No. 94–198. KILE *v.* APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER (TREPANTIS, REAL PARTY IN INTEREST), *ante*, p. 875;

No. 94–336. SMITH *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL., *ante*, p. 947;

No. 94–406. TALLEY *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 932;

No. 94–5001. BURRESS *v.* PRESBYTERIAN CHURCH ET AL., *ante*, p. 879;

No. 94–5008. BROWN *v.* HOWARD-PALMER ET AL., *ante*, p. 879;

No. 94–5014. IUSAN *v.* NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT ET AL., *ante*, p. 879;

No. 94–5030. THOMPSON *v.* RONE, WARDEN, *ante*, p. 880;

No. 94–5046. KONTAKIS *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL., *ante*, p. 881;

No. 94–5121. JENORIKI *v.* UNITED STATES POSTAL INSPECTION SERVICE OF HOUSTON, TEXAS, ET AL., *ante*, p. 885;

No. 94–5158. BURRESS *v.* CHRISTIANITY & CRISIS, INC., ET AL., *ante*, p. 887;

No. 94–5165. PRAIMNATH *v.* AMERICAN CABLEVISION OF QUEENS, INC., *ante*, p. 888;

No. 94–5174. FROMAL *v.* MCCAULEY ET AL., *ante*, p. 888;

No. 94–5184. RICCO *v.* GALLO, *ante*, p. 889;

No. 94–5195. CHRISTIANSON *v.* RELFE ET AL., *ante*, p. 890;

No. 94–5197. CURIALE ET UX. *v.* BURTON ET AL., *ante*, p. 890;

No. 94–5237. LEE *v.* NORTH CAROLINA, *ante*, p. 891;

No. 94–5248. SLOAN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 892;

No. 94–5308. FRIEND *v.* UNITED TECHNOLOGIES/HAMILTON STANDARD ET AL., *ante*, p. 895;

No. 94–5367. MOORE *v.* NORTH CAROLINA, *ante*, p. 898;

No. 94–5383. ROGERS *v.* ZANT, WARDEN, *ante,* p. 899;
No. 94–5396. DUSENBERY *v.* UNITED STATES, *ante,* p. 899;
No. 94–5483. BAUER *v.* UNITED STATES, *ante,* p. 903;
No. 94–5486. GRIFFIN *v.* UNITED STATES, *ante,* p. 949;
No. 94–5527. TOEGEMANN *v.* RHODE ISLAND, *ante,* p. 920;
No. 94–5538. LIEDTKE *v.* STATE BAR OF TEXAS ET AL., *ante,* p. 906;
No. 94–5544. MARTIN *v.* INITIAL U. S. A., *ante,* p. 906;
No. 94–5547. ADAMS *v.* CONNECTICUT, *ante,* p. 906;
No. 94–5631. DUSENBERY *v.* UNITED STATES, *ante,* p. 909;
No. 94–5633. CHATIMA *v.* UNITED STATES, *ante,* p. 944;
No. 94–5669. BAUER *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL., *ante,* p. 910;
No. 94–5676. RUFF *v.* SOUTH CAROLINA ET AL., *ante,* p. 936;
No. 94–5681. FLANAGAN ET UX. *v.* RESOLUTION TRUST CORPORATION ET AL. (two cases), *ante,* p. 911;
No. 94–5824. MCINTYRE *v.* CROUCH ET AL., *ante,* p. 914;
No. 94–5864. COLE *v.* INDIANA, *ante,* p. 940;
No. 94–5885. IN RE TUCKER, *ante,* p. 806; and
No. 94–5904. ACEVEDO *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE, *ante,* p. 940. Petitions for rehearing denied.

No. 93–9780. DUPONT *v.* DUBOISE, WARDEN, ET AL., *ante,* p. 916;
No. 94–385. EXXON CORP. ET AL. *v.* EYAK NATIVE VILLAGE ET AL., *ante,* p. 943; and
No. 94–5122. ENO *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *ante,* p. 916. Petitions for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of these petitions.

No. 94–5471. CAIN *v.* MISSOURI STATE BOARD OF PODIATRY MEDICINE, *ante,* p. 902. Motion of petitioner to defer consideration of petition for rehearing denied. Petition for rehearing denied.

NOVEMBER 29, 1994

Rehearing Denied

No. 94–5319 (A–370). CLARK *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 966. 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.

DECEMBER 2, 1994

Dismissal Under Rule 46

No. 94–6653. NYBERG *v.* RISKA ET AL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.

DECEMBER 5, 1994

Dismissals Under Rule 46

No. 94–6132. IN RE REIDT. Petition for writ of mandamus dismissed under this Court's Rule 46.

No. 94–6133. IN RE GEURIN. Petition for writ of mandamus dismissed under this Court's Rule 46.

Miscellaneous Orders

No. ——. HOGGARD *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER;
No. ——. LEVARIO *v.* STATE BAR OF TEXAS;
No. ——. LORD *v.* DUCKWORTH; and
No. ——. VITALE ET UX. *v.* PERFECTION MANAGEMENT CO., INC., ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–1444. IN RE DISBARMENT OF GASPERI. Disbarment entered. [For earlier order herein, see 512 U. S. 1276.]

No. D–1454. IN RE DISBARMENT OF ANTHONY. Disbarment entered. [For earlier order herein, see 512 U. S. 1282.]

No. D–1457. IN RE DISBARMENT OF GERLIN. Disbarment entered. [For earlier order herein, see 512 U. S. 1285.]

No. D–1460. IN RE DISBARMENT OF FRIEDMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 803.]

No. D–1469. IN RE DISBARMENT OF BONETA. It is ordered that Philip L. Boneta, of New York, N. Y., be suspended from the practice of law in this Court and that a rule 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–1470. IN RE DISBARMENT OF ROCKER. It is ordered that Andrew Joseph Rocker, of Cambridge, Ohio, be suspended

from the practice of law in this Court and that a rule 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–1471. IN RE DISBARMENT OF NILES. It is ordered that Peter L. Niles, of Daytona Beach, Fla., be suspended from the practice of law in this Court and that a rule 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–1472. IN RE DISBARMENT OF CULLEN. It is ordered that Thomas P. Cullen, Jr., of Woodside, N. Y., be suspended from the practice of law in this Court and that a rule 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–1474. IN RE DISBARMENT OF MURPHY. It is ordered that James Patrick Murphy, of Houston, Tex., be suspended from the practice of law in this Court and that a rule 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–1475. IN RE DISBARMENT OF KINCAID. It is ordered that James G. Kincaid, of Ft. Lauderdale, Fla., be suspended from the practice of law in this Court and that a rule 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–1476. IN RE DISBARMENT OF GIBBES. It is ordered that Brian Peter Gibbes, of Hilton Head, S. C., be suspended from the practice of law in this Court and that a rule 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–1477. IN RE DISBARMENT OF DAWKINS. It is ordered that Reuben Samuel Dawkins, of Boston, Mass., be suspended from the practice of law in this Court and that a rule 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–1478. IN RE DISBARMENT OF CHASTAIN. It is ordered that Randall Meads Chastain, of Columbia, S. C., be suspended from the practice of law in this Court and that a rule 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–1479. IN RE DISBARMENT OF KING. It is ordered that Harold T. King, of Bridgehampton, N. Y., be suspended from the practice of law in this Court and that a rule 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–1480. IN RE DISBARMENT OF MACK. It is ordered that John Eugene Mack, of New London, Minn., be suspended from the practice of law in this Court and that a rule 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–1481. IN RE DISBARMENT OF LIEBER. It is ordered that Paul Gerald Lieber, of New York, N. Y., be suspended from the practice of law in this Court and that a rule 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–1482. IN RE DISBARMENT OF KNIGHT. It is ordered that Robert Clyde Knight, of Darien, Wis., be suspended from the practice of law in this Court and that a rule 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–1483. IN RE DISBARMENT OF MORIN. It is ordered that Volney Frederick Morin, Jr., of Ashland, Ore., be suspended from the practice of law in this Court and that a rule 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. 93–1408. NEW YORK STATE CONFERENCE OF BLUE CROSS & BLUE SHIELD PLANS ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.;

No. 93–1414. CUOMO, GOVERNOR OF NEW YORK, ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.; and

No. 93–1415. HOSPITAL ASSOCIATION OF NEW YORK STATE *v.* TRAVELERS INSURANCE CO. ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 920.] Motion of respondents New York State Health Maintenance Organization Conference et al. for divided argument granted to be divided as follows: 20 minutes for Travelers Insurance Co. et al. and 10 minutes for New York State Health Maintenance Organization Conference et al.

No. 93–1577. QUALITEX CO. *v.* JACOBSON PRODUCTS CO., INC. C. A. 9th Cir. [Certiorari granted, 512 U. S. 1287.] Motion of

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

No. 93–1823. MISSOURI ET AL. *v.* JENKINS ET AL. (two cases). C. A. 8th Cir. [Certiorari granted, 512 U. S. 1287.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–1883. ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* EDWARDS, GUARDIAN AD LITEM FOR EDWARDS, ET AL. C. A. 9th Cir. [Certiorari granted, 512 U. S. 1288.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–1935. CURTISS-WRIGHT CORP. *v.* SCHOONEJONGEN ET AL. C. A. 3d Cir. [Certiorari granted, 512 U. S. 1288.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–18. MASTROBUONO ET AL. *v.* SHEARSON LEHMAN HUTTON, INC., ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 921.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–6132. IN RE REIDT. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 958] denied.

No. 94–6647. BROWN *v.* BROWN ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until December 27, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 94–6342. IN RE AGRIO; and

No. 94–6427. IN RE BELL. Petitions for writs of mandamus denied.

Certiorari Granted

No. 94–560. FIRST OPTIONS OF CHICAGO, INC. *v.* KAPLAN ET AL. C. A. 3d Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 19 F. 3d 1503.

Certiorari Denied

No. 93–8697. COCHRAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 56.

No. 93–8815. COLAVITO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 69.

No. 93–9244. SCHMELTZER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 610.

No. 93–9377. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 19 F. 3d 644.

No. 94–162. ROSALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 1461.

No. 94–386. VSA, INC., DBA VSA CAROLINAS *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 24 F. 3d 588.

No. 94–418. SHAW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 182.

No. 94–430. BIRD *v.* UNITED STATES (Reported below: 40 M. J. 270); BLEDSOE *v.* UNITED STATES (40 M. J. 292); JONES *v.* UNITED STATES (39 M. J. 315); WILLIAMS *v.* UNITED STATES (40 M. J. 271); COLLAVINI *v.* UNITED STATES (40 M. J. 271); LUMSDEN *v.* UNITED STATES (40 M. J. 275); CARTER *v.* UNITED STATES (40 M. J. 275); CLANIN *v.* UNITED STATES (40 M. J. 302); DUNCAN *v.* UNITED STATES (40 M. J. 314); JOHNSON *v.* UNITED STATES (40 M. J. 306); GREENHOUSE *v.* UNITED STATES (40 M. J. 289); FISHER *v.* UNITED STATES (40 M. J. 291); HICKMAN *v.* UNITED STATES (40 M. J. 280); THORPE *v.* UNITED STATES (40 M. J. 305); FRITZ *v.* UNITED STATES (40 M. J. 290); TATUM *v.* UNITED STATES (40 M. J. 320); MILLER *v.* UNITED STATES (41 M. J. 77); BIESTERVELD *v.* UNITED STATES (40 M. J. 274); SMALL *v.* UNITED STATES (40 M. J. 285); NORRIS *v.* UNITED STATES (40 M. J. 311); WINSTON *v.* UNITED STATES (41 M. J. 66); HILTS *v.* UNITED STATES (40 M. J. 283); KEY *v.* UNITED STATES (40 M. J. 319); DAVIS *v.* UNITED STATES (41 M. J. 75); FIESE *v.* UNITED STATES (40 M. J. 280); ALFRED *v.* UNITED STATES (40 M. J. 281); BENCH *v.* UNITED STATES (40 M. J. 290); HORNING *v.* UNITED STATES (41 M. J. 93); EDWARDS *v.* UNITED STATES (41 M. J. 87); HICKS *v.* UNITED STATES (40 M. J. 312); LAROCCA *v.* UNITED STATES (40 M. J. 315); GARCIA *v.*

United States (40 M. J. 298); Bryan *v.* United States (40 M. J. 301); Johnson *v.* United States (41 M. J. 66); Mercado *v.* United States (40 M. J. 289); Sanderson *v.* United States (40 M. J. 301); Domingo *v.* United States (41 M. J. 92); Nieves *v.* United States (41 M. J. 88); Vargas-Coronado *v.* United States (40 M. J. 293); Moreno *v.* United States (41 M. J. 110); Kramer *v.* United States (40 M. J. 282); Jovanovich *v.* United States (40 M. J. 284); Stohosky *v.* United States (41 M. J. 72); Bishop *v.* United States (40 M. J. 303); Howe *v.* United States (40 M. J. 308); Wixom *v.* United States (40 M. J. 308); Miller *v.* United States (41 M. J. 83); Brinkley *v.* United States (40 M. J. 273); Cormier *v.* United States (41 M. J. 76); Simon *v.* United States (40 M. J. 274); Blaylock *v.* United States (41 M. J. 81); Scholtz *v.* United States (40 M. J. 298); Hughes *v.* United States (40 M. J. 298); Adams *v.* United States (40 M. J. 294); Snapp *v.* United States (40 M. J. 301); Durr *v.* United States (40 M. J. 301); Milburn *v.* United States (40 M. J. 306); Martinez *v.* United States (40 M. J. 307); Robinson *v.* United States (40 M. J. 308); Famularo *v.* United States (40 M. J. 310); Oates *v.* United States (40 M. J. 313); Williams *v.* United States (40 M. J. 313); Jones *v.* United States (41 M. J. 66); Strong *v.* United States (41 M. J. 68); Bouquet *v.* United States (41 M. J. 68); Roberts *v.* United States (41 M. J. 71); Provencio *v.* United States (41 M. J. 75); Jackson *v.* United States (41 M. J. 76); Hatmaker *v.* United States (41 M. J. 92); Wilkins *v.* United States (41 M. J. 88); Trivino *v.* United States (40 M. J. 286); Sirnic *v.* United States (41 M. J. 69); Mathews *v.* United States (40 M. J. 289); Mendenhall *v.* United States (41 M. J. 90); Murphy *v.* United States (41 M. J. 95); Sanchez *v.* United States (40 M. J. 313); Jacobs *v.* United States (40 M. J. 282); Lott *v.* United States (41 M. J. 81); Key *v.* United States (41 M. J. 97); Ware *v.* United States (40 M. J. 319); Wright *v.* United States (41 M. J. 84); Rhodes *v.* United States (41 M. J. 94); Loudermilk *v.* United States (41 M. J. 84); Dice *v.* United States (41 M. J. 85); Cummings *v.* United States (41 M. J. 73); Mitchell *v.* United States (40 M. J. 270); Majors *v.* United States (40 M. J. 275); Deleon *v.* United States (40 M. J. 312); Ellis *v.* United States (40 M. J. 274); Poole *v.* United States (40 M. J. 285); Drown *v.* United States (40 M. J. 279); and Bundy *v.* United States (41 M. J. 77). C. A. Armed Forces. Certiorari denied.

No. 94–441. MACKEY *v.* MOSS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–456. BUNCE ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 138.

No. 94–462. CITY OF GRAPEVINE *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 17 F. 3d 1502.

No. 94–469. HOLLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 902.

No. 94–559. RAMIREZ *v.* UNITED STATES; HARSHAW *v.* UNITED STATES; MCSPARRAN *v.* UNITED STATES; OWEN *v.* UNITED STATES; DEBERRY *v.* UNITED STATES; and LUBITZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 315 (first case); 40 M. J. 320 (second case); 41 M. J. 72 (third case); 41 M. J. 89 (fourth case); 41 M. J. 122 (fifth case); 40 M. J. 165 (sixth case).

No. 94–605. ANDREWS-POWLEY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 76.

No. 94–644. HERCULES INC. *v.* UTAH STATE TAX COMMISSION AUDITING DIVISION. Sup. Ct. Utah. Certiorari denied. Reported below: 877 P. 2d 133.

No. 94–647. WRIGHT *v.* CLAY. Ct. App. Ind. Certiorari denied. Reported below: 629 N. E. 2d 857.

No. 94–649. GEORGE *v.* BETHLEHEM STEEL CORP. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1171.

No. 94–652. FREEDOM RANCH, INC. *v.* TULSA BOARD OF ADJUSTMENT ET AL. Ct. App. Okla. Certiorari denied. Reported below: 878 P. 2d 380.

No. 94–657. ZIMMERMAN *v.* BISHOP ESTATE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 784.

No. 94–660. DEGROOTH ET AL. *v.* GENERAL DYNAMICS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 103.

No. 94–664. JOHNSON, DBA F. C. JOHNSON CONSTRUCTION CO. *v.* HYNEMAN. Sup. Ct. Miss. Certiorari denied.

No. 94–665. BROBST *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–666. INTERNATIONAL RECTIFIER CORP. *v.* SGS-THOMSON MICROELECTRONICS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 31 F. 3d 1177.

No. 94–672. BROWN *v.* UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1170.

No. 94–673. GUYER ET AL. *v.* ALACHUA COUNTY SCHOOL BOARD ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 634 So. 2d 806.

No. 94–674. ALLEN ET AL. *v.* CITY OF DUARTE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–677. NGHIEM *v.* NEC ELECTRONICS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 1437.

No. 94–680. LANPHERE & URBANIAK ET AL. *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 21 F. 3d 1508.

No. 94–681. RIES, MAYOR OF PARMA, OHIO *v.* PICHA. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–683. BB ASSET MANAGEMENT, INC., DBA BROWN BAG SOFTWARE *v.* SYMANTEC CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 630.

No. 94–684. AIRBUS INDUSTRIE, G. I. E., ET AL. *v.* LINTON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATES OF HOWELL ET UX., DECEASED, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 592.

No. 94–690. GRACE INVESTMENT CO. ET AL. *v.* RED MOUNTAIN MACHINERY CO. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 1408.

No. 94–697. BARRETT *v.* MISSISSIPPI BAR. Sup. Ct. Miss. Certiorari denied.

No. 94–703. COX *v.* BOEING CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1056.

No. 94–709. ENCINAS *v.* BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–795. BROTHERS ET AL. *v.* KLEVENHAGEN, SHERIFF, HARRIS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 452.

No. 94–5083. RODRIGUEZ-MEJIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 20 F. 3d 1090.

No. 94–5278. LASALLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 1433.

No. 94–5324. PALOMINO-FIGUEROA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–5441. THURMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1119.

No. 94–5499. MITCHELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 18 F. 3d 1355.

No. 94–5516. GIROLAMO, AKA MASCITTI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 23 F. 3d 320.

No. 94–5735. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 307.

No. 94–5923. HARRIS *v.* EVANS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1118.

No. 94–5933. SMITH *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 637 So. 2d 398.

No. 94–5961. WELSAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 205.

No. 94–6016. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 629.

No. 94–6052. BRUNK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 236.

No. 94–6169. IGLESIAS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 185 Wis. 2d 118, 517 N. W. 2d 175.

No. 94–6214. HUDSON *v.* HEDGE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 274.

No. 94–6242. GREEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 336 N. C. 142, 443 S. E. 2d 14.

No. 94–6337. ALDRIDGE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 94–6357. RHODES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 638 So. 2d 920.

No. 94–6373. CULLY *v.* GRACE HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 18.

No. 94–6378. SPENCER *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 519 N. W. 2d 357.

No. 94–6390. JOHNSON *v.* DAVIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1491.

No. 94–6400. JORDAN *v.* CITY OF AURORA, COLORADO, ET AL. Ct. App. Colo. Certiorari denied. Reported below: 876 P. 2d 38.

No. 94–6402. KASHANNEJAD *v.* BLOCK, SHERIFF OF LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6405. FARR *v.* STINSON ET AL. Ct. App. Wis. Certiorari denied. Reported below: 181 Wis. 2d 1003, 513 N. W. 2d 707.

No. 94–6414. OWENS *v.* CALL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 130.

No. 94–6416. LONG *v.* TAYLOR ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–6418. ROYSTER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 94–6425. ZAGWOSKI *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–6429. BALLARD *v.* GARTZ ET AL. Sup. Ct. N. M. Certiorari denied.

No. 94–6433. YBARRA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6434. SADLER *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 108.

No. 94–6438. SEMIEN *v.* COMANCHE COUNTY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 16 F. 3d 417.

No. 94–6439. JAMES *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1486.

No. 94–6441. ST. HILAIRE *v.* PARIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 634.

No. 94–6443. MALLORY *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 991.

No. 94–6451. GREEN *v.* ADAMS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 642 So. 2d 1362.

No. 94–6455. WATSON ET AL. *v.* FARLOW ET AL. Sup. Ct. Ala. Certiorari denied.

No. 94–6463. CARNEGIE *v.* DOWLING ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 200 App. Div. 2d 502, 606 N. Y. S. 2d 655.

No. 94–6478. MARSH *v.* JOHN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1547.

No. 94–6479. MIKKILINENI *v.* AMWEST SURETY INSURANCE CO. ET AL.; MIKKILINENI *v.* CHESTER ET AL.; MIKKILINENI *v.* BOROUGH OF FOREST HILLS; and MIKKILINENI *v.* GLENN ENGINEERING & ASSOCIATES, LTD., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1172.

No. 94–6480. MIKKILINENI *v.* BOROUGH OF FOREST HILLS. Sup. Ct. Pa. Certiorari denied. Reported below: 537 Pa. 651, 644 A. 2d 737.

No. 94–6484. CRITTENDEN *v.* FEDERAL TRADE COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 26.

No. 94–6541. ECHOLS *v.* YUKON TELEPHONE CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 631.

No. 94–6545. CLECKLEY *v.* ABATE ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–6547. CLARK *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 95 Md. App. 727.

No. 94–6568. LAWRIE *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 643 A. 2d 1336.

No. 94–6580. FRETER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 F. 3d 783.

No. 94–6581. DURHAM *v.* HENMAN, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 126.

No. 94–6582. BELL *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1484.

No. 94–6585. HEATH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1499.

No. 94–6607. COOK *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 129.

No. 94–6619. WALLACE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–6626. SEIWELL *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 634.

No. 94–6630. BROUGHTON *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 421.

No. 94–6671. SINGLETERRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 29 F. 3d 733.

No. 94–6672. SHERRILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 344.

No. 94–6677. GILLIARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 131.

No. 94–6678. HAWKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1489.

No. 94–6686. SUTHERLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1094.

No. 94–6690. MATEO-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 1446.

No. 94–6695. BLAKE *v.* BLAKE ET AL. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 878 S. W. 2d 209.

No. 94–6704. LAWTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–6706. PARKER *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–6709. MARSHAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–6710. ANDERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1489.

No. 94–6714. MCCUTCHEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 F. 3d 271.

No. 94–6715. KEENAN *v.* ALLEN. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1213.

No. 94–6718. O'NEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–6723. ZENON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 624.

No. 94–6725. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1496.

No. 94–6727. PHILBIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 567.

No. 94–6729. MUHAMMED *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1393.

No. 94–6731. RATCLIFFE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 24 F. 3d 1464.

No. 94–6734. THOMPSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 27 F. 3d 671.

No. 94–6737. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 82.

No. 94–6740. BOWLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 32 F. 3d 326.

No. 94–6741. DIX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 55.

No. 94–6743. CREECH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1382.

No. 94–6746. WRIGHT *v.* ALEXANDRIA DIVISION OF SOCIAL SERVICES. Ct. App. Va. Certiorari denied. Reported below: 16 Va. App. 821, 433 S. E. 2d 500.

No. 94–6753. FURMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 31 F. 3d 1034.

No. 94–6756. GRIFFITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 22 F. 3d 686.

No. 94–6758. POLAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–6761. NIEVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94–6763. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 563.

No. 94–6765. WOOTEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 639.

No. 94–6766. WARREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 18 F. 3d 602.

No. 94–6767. ALLEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1488.

No. 94–6769. ATWOOD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 30 F. 3d 126.

No. 94–6770. BALDEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1499.

No. 94–6771. ABREGO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 572.

No. 94–6772. BUSHERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 997 F. 2d 1343.

No. 94–6781. FORSYTH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 628.

No. 94–6782. GARNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–6794. ADAIL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 1046.

No. 94–6797. ANJUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 53.

No. 94–6801. RODRIGUEZ-RONCANCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 F. 3d 573.

No. 94–6802. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 93.

No. 94–6803. RIVAS-SABOGAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–6804. MOSES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–6805. LEWIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–6806. OWENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–6818. KRUEGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1106.

No. 93–9593. GENDRON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 18 F. 3d 955.

No. 94–655. INSURANCE COMPANY OF PENNSYLVANIA ET AL. *v.* EMPIRE FIRE & MARINE INSURANCE CO. ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. JUSTICE BREYER took no

part in the consideration or decision of this petition. Reported below: 638 So. 2d 102.

No. 94–407. SGS-THOMSON MICROELECTRONICS, INC. *v.* INTERNATIONAL RECTIFIER CORP. C. A. Fed. Cir. Motions of American Board of Trial Advocates and Houston Intellectual Property Law Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 31 F. 3d 1177.

No. 94–445. UNIVERSAL MONEY CENTERS, INC. *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 22 F. 3d 1527.

No. 94–661. W. R. GRACE & CO.-CONN. *v.* MARYLAND CASUALTY CO. ET AL. C. A. 2d Cir. Motion of respondents to strike reply brief of petitioner denied. Certiorari denied. Reported below: 23 F. 3d 617.

Rehearing Denied

No. 93–8709. OWEN *v.* NEBRASKA (two cases), *ante*, p. 923;

No. 93–9435. ROBINSON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, *ante*, p. 846;

No. 93–9614. IN RE WRIGHT, *ante*, p. 806;

No. 93–9755. HUNT *v.* GRINKER, COMMISSIONER, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, ET AL., *ante*, p. 864;

No. 94–182. BOOSTROM *v.* BACH, *ante*, p. 928;

No. 94–204. CHISUM *v.* UNITED STATES, *ante*, p. 946;

No. 94–347. MORISSETTE ET AL. *v.* YU ET AL., *ante*, p. 947;

No. 94–353. FINIZIE *v.* CITY OF BRIDGEPORT, *ante*, p. 931;

No. 94–5768. ANDERSON *v.* UNITED STATES, *ante*, p. 913; and

No. 94–5808. BROCKMAN *v.* SWEETWATER COUNTY SCHOOL DISTRICT NO. 1, *ante*, p. 951. Petitions for rehearing denied.

DECEMBER 6, 1994

Dismissal Under Rule 46

No. 94–401. JACKSON *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 22 F. 3d 277.

Miscellaneous Orders

No. A–394 (94–7100). HAWKINS *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, pre-

sented to JUSTICE SCALIA, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. A–411. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* BANNISTER. Application to vacate the stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY would grant the application.

DECEMBER 7, 1994

Certiorari Denied

No. 94–7127 (A–408). RESNOVER *v.* INDIANA. Sup. Ct. Ind. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 9, 1994

Miscellaneous Orders

No. 94–558. UNITED STATES *v.* HAYS ET AL.; and

No. 94–627. LOUISIANA ET AL. *v.* HAYS ET AL. Appeals from D. C. W. D. La. The Court defers noting probable jurisdiction in these cases so that the United States District Court for the Western District of Louisiana, by reentering its judgment, can cure a procedural defect arising from that court's having entered judgment prior to the issuance on July 27, 1994, of this Court's judgment in *Louisiana* v. *Hays*, No. 93–1539. This order shall be sent to the District Court forthwith. The District Court shall immediately reenter its judgment. This Court will then note probable jurisdiction and consolidate the cases for briefing and oral argument on the same schedule as if this Court had noted probable jurisdiction today.

No. 94–753. ST. CYR ET AL. *v.* HAYS ET AL. Appeal from D. C. W. D. La.; and

No. 94–754. ST. CYR ET AL. *v.* HAYS ET AL. C. A. 5th Cir. The Court defers further consideration in these cases so that the United States District Court for the Western District of Louisi-

ana, by reentering its judgment, can cure a procedural defect arising from that court's having entered judgment prior to the issuance on July 27, 1994, of this Court's judgment in *Louisiana* v. *Hays*, No. 93–1539. This order shall be sent to the District Court forthwith.

DECEMBER 11, 1994

Certiorari Denied

No. 94–7193 (A–425). KINNAMON *v.* SCOTT, 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. Reported below: 40 F. 3d 731.

DECEMBER 12, 1994

Affirmed on Appeal

No. 94–753. ST. CYR ET AL. *v.* HAYS ET AL. Affirmed on appeal from D. C. W. D. La. Reported below: 862 F. Supp. 119.

Certiorari Dismissed

No. 94–6817. HANN *v.* UNITED STATES. C. A. 5th Cir. It appearing that petitioner died December 3, 1994, certiorari dismissed. Reported below: 38 F. 3d 570.

Miscellaneous Orders. (See also No. 94–634, *infra.*)

No. ——. KIRKPATRICK *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. ——. WILDBERGER *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal denied.

No. D–1458. IN RE DISBARMENT OF COLE. Disbarment entered. [For earlier order herein, see 512 U. S. 1285.]

No. D–1459. IN RE DISBARMENT OF DURUSAU. Disbarment entered. [For earlier order herein, see 512 U. S. 1285.]

No. D–1473. IN RE DISBARMENT OF BOSTIC. It is ordered that Lee Harold Bostic, of Jamaica, N. Y., be suspended from the practice of law in this Court and that a rule 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–1484. IN RE DISBARMENT OF ALTSCHUL. It is ordered that Donald Scott Altschul, of San Francisco, Cal., be suspended from the practice of law in this Court and that a rule 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–1485. IN RE DISBARMENT OF JACOBS. It is ordered that Richard Mark Jacobs, of St. Louis, Mo., be suspended from the practice of law in this Court and that a rule 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. 93–1202. BRUNWASSER *v.* STEINER, 510 U. S. 1195. It is ordered that Allen Brunwasser, of Pittsburgh, Pa., shall within 21 days of this order pay respondent $500 as ordered by this Court on May 2, 1994 [511 U. S. 1067], or show cause why he should not be disbarred from the practice of law in this Court or otherwise disciplined for failure to comply with an order of the Court.

No. 93–1408. NEW YORK STATE CONFERENCE OF BLUE CROSS & BLUE SHIELD PLANS ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.;

No. 93–1414. CUOMO, GOVERNOR OF NEW YORK, ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.; and

No. 93–1415. HOSPITAL ASSOCIATION OF NEW YORK STATE *v.* TRAVELERS INSURANCE CO. ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 920.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–286. FREIGHTLINER CORP. ET AL. *v.* MYRICK ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 922.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–500. COMMISSIONER OF INTERNAL REVENUE *v.* SCHLEIER ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 998.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 94–5843. RODENBAUGH *v.* SENAPE ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 958] denied.

No. 94–6893. IN RE SUHY. Petition for writ of habeas corpus denied.

No. 94–6654. IN RE RUSSELL. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 94–558. UNITED STATES *v.* HAYS ET AL.; and

No. 94–627. LOUISIANA ET AL. *v.* HAYS ET AL. Appeals from D. C. W. D. La. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. The stay heretofore entered August 11, 1994 [512 U. S. 1273], is reentered as of the date the District Court reentered its judgment. Reported below: 862 F. Supp. 119.

Certiorari Denied

No. 93–1140. JAMES B. BEAM DISTILLING CO. *v.* GEORGIA ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 609, 437 S. E. 2d 782.

No. 93–1882. SWANSON ET AL. *v.* NORTH CAROLINA ET AL. Sup. Ct. N. C. Certiorari denied. Reported below: 335 N. C. 674, 441 S. E. 2d 537.

No. 93–9392. ISBY *v.* SPENCER, JUDGE, CIRCUIT COURT OF INDIANA, MADISON COUNTY. C. A. 7th Cir. Certiorari denied.

No. 94–171. TOLER *v.* UNITED STATES;

No. 94–5417. BLAIN *v.* UNITED STATES; and

No. 94–5557. FORMANN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 17 F. 3d 745.

No. 94–326. SOUNDGARDEN ET AL. *v.* GREGOIRE, ATTORNEY GENERAL OF WASHINGTON, ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 123 Wash. 2d 750, 871 P. 2d 1050.

No. 94–330. LEWIS *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 21 F. 3d 428.

No. 94–331. MINNESOTA COMMISSIONER OF REVENUE ET AL. *v.* NORWEST BANK DULUTH, N. A., ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 514 N. W. 2d 565.

No. 94–402. PINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 24 F. 3d 1056.

No. 94–414. PACIFICO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 48 F. 3d 1234.

No. 94–503. HENEGAR *v.* BANTA. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 223.

No. 94–505. TRANSPORTACION MARITIMA MEXICANA, S. A., ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (TAMMEN ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 94–512. VIVIAN INDUSTRIAL PLASTICS, INC. *v.* MOORE, INDIVIDUALLY AND BY NEXT FRIEND, MOORE. Sup. Ct. Tex. Certiorari denied. Reported below: 889 S. W. 2d 246.

No. 94–518. ANDREWS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 312.

No. 94–533. MALONE & HYDE, INC. *v.* GENERAL DRIVERS, SALESMEN & WAREHOUSEMEN'S LOCAL UNION NO. 984, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 1039.

No. 94–617. LIERENZ *v.* BOWEN ET AL. Ct. App. Ohio, Erie County. Certiorari denied.

No. 94–699. PRYMER *v.* OGDEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 29 F. 3d 1208.

No. 94–704. CITY OF CHICAGO *v.* ALEX ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 29 F. 3d 1235.

No. 94–705. HIRAI *v.* ITO, PERSONAL REPRESENTATIVE OF THE HEIRS OF ITO, DECEASED; and

No. 94–751. MACRO ENERGY, INC., ET AL. *v.* ITO, PERSONAL REPRESENTATIVE OF THE HEIRS OF ITO, DECEASED. C. A. 9th Cir. Certiorari denied.

No. 94–713. RAY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–715. HALL *v.* GRAYSON. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 566.

No. 94–716. SCHEIDLER ET AL. *v.* DELAWARE WOMEN'S HEALTH ORGANIZATION, INC., ET AL.; and

No. 94–718. MIGLIORINO (MILLER) *v.* DELAWARE WOMEN'S HEALTH ORGANIZATION, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 1053.

No. 94–719. BIRKBECK, PERSONAL REPRESENTATIVE OF THE ESTATE OF BIRKBECK, DECEASED, ET AL. *v.* MARVEL LIGHTING CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 507.

No. 94–725. LIABILITY INVESTIGATIVE FUND EFFORT, INC., ET AL. *v.* MASSACHUSETTS ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 418 Mass. 436, 636 N. E. 2d 1317.

No. 94–731. LAKE COUNTY, INDIANA *v.* MYERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 847.

No. 94–733. JONES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 26 F. 3d 139.

No. 94–737. O'LEARY *v.* COUNTY OF SACRAMENTO. C. A. 9th Cir. Certiorari denied. Reported below: 19 F. 3d 1440.

No. 94–738. CITY OF NEW HAVEN ET AL. *v.* KUNTZ. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 622.

No. 94–739. ROKKE *v.* ROKKE. Ct. App. Wash. Certiorari denied.

No. 94–744. REEL PIPE & VALVE CO., INC., ET AL. *v.* CONSOLIDATED CITY OF INDIANAPOLIS-MARION COUNTY ET AL. Ct. App. Ind. Certiorari denied. Reported below: 633 N. E. 2d 274.

No. 94–750. QUANTUM CHEMICAL CORP. ET AL. *v.* WULF ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 26 F. 3d 1368.

No. 94–755. CHANOFF ET AL. *v.* UNITED STATES SURGICAL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 31 F. 3d 66.

No. 94–767. WEXFORD ASSOCIATES, INC., ET AL. *v.* ATKISSON ET UX. Sup. Ct. Va. Certiorari denied. Reported below: 248 Va. 142, 445 S. E. 2d 101.

No. 94–774. Suan See Chong et al. *v.* Immigration and Naturalization Service. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 573.

No. 94–781. Figgie *v.* Moskovitz. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 638, 635 N. E. 2d 331.

No. 94–793. Eick *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 559.

No. 94–804. Velentzas *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 30 F. 3d 381.

No. 94–812. Mangano *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 11 F. 3d 853.

No. 94–813. Ferrel *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 19 F. 3d 1444.

No. 94–816. Klinginsmith *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 1507.

No. 94–822. Heller *v.* Norcal Mutual Life Insurance Co. et al. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 4th 30, 876 P. 2d 999.

No. 94–827. Pierce *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 149.

No. 94–838. Torres *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1463.

No. 94–839. Hill *v.* Hill. App. Ct. Conn. Certiorari denied. Reported below: 35 Conn. App. 160, 644 A. 2d 951.

No. 94–845. Green *v.* Commissioner of Internal Revenue. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1378.

No. 94–851. Hongkong & Shanghai Banking Corp. Ltd. *v.* Hoopa Valley Tribe. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1138.

No. 94–858. Chavez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 238.

No. 94–863. WERTHEIMER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1491.

No. 94–868. WALLACE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–875. O'NEIL, AKA KERPSACK *v.* INTERNAL REVENUE SERVICE. C. A. 9th Cir. Certiorari denied.

No. 94–5168. SULLIVAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 198.

No. 94–5410. CARTWRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 6 F. 3d 294.

No. 94–5419. FOX *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 183, 631 N. E. 2d 124.

No. 94–5773. BLACKMON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 560.

No. 94–5793. BENSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 567.

No. 94–5912. GRIFFIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 247 Ill. App. 3d 1, 616 N. E. 2d 1242.

No. 94–5964. WILKERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 881 S. W. 2d 321.

No. 94–6054. MELVILLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 134.

No. 94–6055. LAMBEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 974 F. 2d 1389.

No. 94–6058. MOOSE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 424 Pa. Super. 579, 623 A. 2d 831.

No. 94–6076. ARMSTRONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 409.

No. 94–6077. CIARDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6083. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6110. GOULDING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 26 F. 3d 656.

No. 94–6115. DOE *v.* GALLEGOS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 406.

No. 94–6240. FOWLER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 873 P. 2d 1053.

No. 94–6323. JONES, FKA PARK *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1289.

No. 94–6424. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 878 P. 2d 375.

No. 94–6449. CHAN *v.* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–6465. ALDERMAN *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1541.

No. 94–6475. LOWE-BEY *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 816.

No. 94–6477. PIERCE *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 633.

No. 94–6482. WASHINGTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6486. KELLY *v.* WITHROW, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 363.

No. 94–6488. HUNES *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 94–6491. JACKSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 648 A. 2d 424.

No. 94–6501. KERSH *v.* BORDEN, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 972 F. 2d 347.

No. 94–6503. BEAL *v.* PARAMOUNT PICTURES CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 454.

No. 94–6512. ROY *v.* UNIVERSITY OF HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 139.

No. 94–6517. LONG *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied.

No. 94–6518. POSEY *v.* MAGNOLIA STATE ENTERPRISES. Sup. Ct. Miss. Certiorari denied.

No. 94–6523. GRIZZLE *v.* WIESMAN, CIRCUIT JUDGE, CIRCUIT COURT OF MISSOURI, ST. LOUIS COUNTY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1393.

No. 94–6524. GAVAL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 202 Mich. App. 51, 507 N. W. 2d 786.

No. 94–6525. HYDER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 642 So. 2d 1370.

No. 94–6526. HOLLY *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1495.

No. 94–6528. GARCIA *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6537. HIGAREDA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 24 Cal. App. 4th 1399, 29 Cal. Rptr. 2d 763.

No. 94–6538. GARCIA *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6556. GREEN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–6557. GREENE *v.* PHELPS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–6569. LONG *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 637 So. 2d 486.

No. 94–6579. CALVENTO *v.* METCALF ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6584. HENDERSON *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 879 P. 2d 383.

No. 94–6601. CRAWFORD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 94–6602. BERNARD *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 136.

No. 94–6608. COSTELLO *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 94–6617. SAWYER *v.* INTERNATIONAL DAIRY QUEEN INC. ET AL. (two cases). C. A. 6th Cir. Certiorari denied.

No. 94–6624. STATEN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 419, 639 N. E. 2d 550.

No. 94–6633. SHORES *v.* REDDOCH ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–6644. DESMOND *v.* NYNEX CORP. C. A. 1st Cir. Certiorari denied. Reported below: 37 F. 3d 1484.

No. 94–6645. FARR *v.* DAVIS ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–6662. BENDER *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 94–6663. HARRIS *v.* LILLARD ET AL. Sup. Ct. Tex. Certiorari denied.

No. 94–6667. MCGEE *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6669. VAN HOOK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1448, 633 N. E. 2d 542.

No. 94–6760. NATHAN *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–6774. CORRIGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 436.

No. 94–6787. BLANCHARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1495.

No. 94–6793. DEVELASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 28 F. 3d 2.

No. 94–6810. ROBINSON *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 32 F. 3d 571.

No. 94–6815. ECKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 966.

No. 94–6821. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 557.

No. 94–6822. ORR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 636.

No. 94–6823. MAYO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 1068.

No. 94–6827. BAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 563.

No. 94–6829. LOMINAC ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–6830. JUVENILE (AG–S) *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 140.

No. 94–6838. SMITH ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 26 F. 3d 739.

No. 94–6843. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–6844. BURTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 55.

No. 94–6846. GORDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1491.

No. 94–6854. DIAZ-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 94.

No. 94–6856. ABREO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 29.

No. 94–6858. MORRELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1217.

No. 94–6859. OSIFO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–6860. ALLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 1068.

No. 94–6865. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1489.

No. 94–6867. HART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1124.

No. 94–6868. DOWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 53.

No. 94–6869. DOUGLAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–6873. FERREYROS-PERRIGGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1074.

No. 94–6879. GREER *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 556.

No. 94–6880. GONZALEZ *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 556.

No. 94–6881. PARKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 34 F. 3d 44.

No. 94–6882. HARRIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–6883. INICO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 40 F. 3d 1236.

No. 94–6892. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1179.

No. 94–317. NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Certiorari denied. JUSTICE

GINSBURG took no part in the consideration or decision of this petition. Reported below: 21 F. 3d 469.

No. 94–634. IN RE CARTER ET AL. C. A. 8th Cir. Petition for writ of certiorari, habeas corpus, and mandamus denied.

No. 94–695. INTERNATIONAL BUSINESS MACHINES CORP. *v.* ALLEN-MYLAND, INC. C. A. 3d Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 33 F. 3d 194.

No. 94–754. ST. CYR ET AL. *v.* HAYS ET AL. C. A. 5th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 93–9113. BAKER *v.* RUNYON, POSTMASTER GENERAL, ET AL., *ante*, p. 833;

No. 93–9145. RODENBAUGH *v.* KNISLEY ET AL., *ante*, p. 834;

No. 93–9231. WHITNEY *v.* CRUZ ET AL., *ante*, p. 837;

No. 93–9379. BARTON *v.* UNITED STATES, *ante*, p. 843;

No. 93–9578. LANG *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES, *ante*, p. 854;

No. 93–9658. FRIDAY *v.* UNITED STATES, *ante*, p. 859;

No. 94–5013. HARRIS *v.* HATFIELD, WARDEN, *ante*, p. 879;

No. 94–5021. PEABODY *v.* ARIZONA, *ante*, p. 880;

No. 94–5100. BRAGGS *v.* MOBILE COUNTY HEALTH DEPARTMENT ET AL., *ante*, p. 884;

No. 94–5498. RAE *v.* DISTRICT OF COLUMBIA ET AL., *ante*, p. 904;

No. 94–5588. KRALL *v.* DEPARTMENT OF THE AIR FORCE ET AL., *ante*, p. 967;

No. 94–5612. HALE *v.* FLORIDA, *ante*, p. 909;

No. 94–5661. GREENLAW *v.* SMITH, *ante*, p. 935;

No. 94–5677. PUGH *v.* BUTTERWORTH ET AL., *ante*, p. 936;

No. 94–5838. LEKAN *v.* AMERICAN ENERGY SERVICES, INC., *ante*, p. 952;

No. 94–5945. CURIALE ET UX. *v.* ANDRUS, GOVERNOR OF IDAHO, ET AL., *ante*, p. 971;

No. 94–6066. HOEKEL *v.* PLUMBING PLANNING CORP., *ante*, p. 974;

No. 94–6090. DAVIS *v.* LOUISIANA, *ante*, p. 975; and

No. 94–6316. IN RE LIGGINS, *ante*, p. 985. Petitions for rehearing denied.

No. 94–5125. MILTON *v.* UNITED STATES, *ante*, p. 919. Petition for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of this petition.

DECEMBER 22, 1994

Miscellaneous Order

No. 94–167. GUTIERREZ DE MARTINEZ ET AL. *v.* LAMAGNO ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 998.] Motion of respondent Dirk A. Lamagno to substitute counsel denied without prejudice to the filing of a motion for divided argument.

JANUARY 2, 1995

Certiorari Denied

No. 94–7010 (A–403). JACOBS *v.* SCOTT, 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 BREYER would grant the application for stay of execution. Reported below: 31 F. 3d 1319.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

In my opinion, it is fundamentally unfair for the State of Texas to go forward with the execution of Jesse Dewayne Jacobs. The principal evidence supporting his conviction was a confession that was expressly and unequivocally disavowed, at a subsequent trial, by the same prosecutor who presented the case against Jacobs. That same prosecutor's office now insists that the State may constitutionally go forward and execute Jacobs. The injustice, in my view, is self-evident.

Jacobs was convicted of murdering a woman named Etta Urdiales. After his arrest, he gave a videotaped confession stating that he abducted the victim and fatally shot her in a wooded area. He led investigators to her body. At his trial, the State introduced this confession and relied heavily on it.

Jacobs, however, testified at trial that the confession was false. He claimed to have given the false confession because he believed it would lead to a death sentence, which he perceived to be preferable to the alternative of spending the rest of his life in jail. In

his trial testimony, Jacobs admitted kidnaping Urdiales, and taking her to an abandoned house where his sister, Bobbie Hogan, was waiting. But he denied shooting the victim. According to Jacobs' testimony, he left Urdiales in the house with his sister and then went outside and sat on the porch. He did not know Hogan was armed, or that she planned to kill Urdiales. Rather, he believed Hogan, who was romantically involved with Urdiales' estranged husband, wanted to scare the victim into giving up custody of her children. Jacobs testified that while he was waiting outside, Hogan shot Urdiales. When Jacobs entered the house, Hogan said that she did not mean to kill Urdiales. Jacobs then told Hogan to go home, said he would take care of things, and buried the victim's body.

The prosecution disputed Jacobs' trial testimony, arguing that "'[t]he simple fact of the matter is that Jesse Jacobs and Jesse Jacobs alone killed Etta Ann Urdiales.'" 31 F. 3d 1319, 1322, n. 6 (CA5 1994). The jury convicted Jacobs of capital murder and sentenced him to death.

Several months later, Hogan was tried in connection with the Urdiales killing. At this trial, the State abandoned its theory that Jacobs had shot Urdiales. It called Jacobs as a witness, vouched for his veracity, and, according to the Court of Appeals for the Fifth Circuit, "told the jury that the evidence revealed [through further] investigation cast doubt on Jacobs's conviction." *Ibid.* As described by the Court of Appeals:

> "[T]he prosecutor said that the state had been wrong in taking the position in Jacobs's trial that Jacobs had done the actual killing. The prosecutor stated that, after further investigation, he had determined that Hogan, not Jacobs, had killed the victim. The prosecution maintained that Jacobs did not know that Hogan had a gun. The state called Jacobs as a witness to testify that Hogan shot the victim." *Id.*, at 1322–1323 (footnotes omitted).

The prosecutor told the jury that he had "'changed my mind about what actually happened. . . . And I'm convinced that Jesse Jacobs is telling the truth when he says that Bobbie Hogan is the one that pulled the trigger.'" *Id.*, at 1322, n. 6. He also "claimed that Jacobs was telling the truth when he testified that he did not in any way anticipate that the victim would be shot." *Id.*, at

1323, n. 7. Several police officers testified at the sister's trial that portions of Jacobs' confession were untrue. *Id.*, at 1323, n. 6.

Despite these post-trial developments, the State of Texas now insists that it may constitutionally carry out Jacobs' death sentence. I find this course of events deeply troubling. If the prosecutor's statements at the Hogan trial were correct, then Jacobs is innocent of capital murder. Cf. *Herrera* v. *Collins*, 506 U. S. 390, 417 (1993) (discussing whether habeas relief is available to a death-row inmate who has advanced "a truly persuasive demonstration of 'actual innocence' "). Moreover, for a sovereign State represented by the same lawyer to take flatly inconsistent positions in two different cases—and to insist on the imposition of the death penalty after repudiating the factual basis for that sentence—surely raises a serious question of prosecutorial misconduct. In my opinion, it would be fundamentally unfair to execute a person on the basis of a factual determination that the State has formally disavowed.

Almost 60 years ago, we recognized that a prosecutor's knowing presentation of false testimony is "inconsistent with the rudimentary demands of justice." *Mooney* v. *Holohan*, 294 U. S. 103, 112 (1935). We have refined this principle over the years, finding a due process violation when a prosecutor fails to correct testimony he knows to be false, *Alcorta* v. *Texas*, 355 U. S. 28 (1957), even when the falsehood in the testimony goes only to the witness' credibility, *Napue* v. *Illinois*, 360 U. S. 264 (1959). See also *Giglio* v. *United States*, 405 U. S. 150 (1972) (new trial required when Government witness testified falsely on matters relating to credibility and the prosecutor who served as trial counsel should have been aware of the falsehood).

In *Durley* v. *Mayo*, 351 U. S. 277 (1956), we granted certiorari to consider whether due process was offended by a conviction which was later alleged to rest upon perjured testimony, despite the fact that the prosecutor did not know of the testimony's falsity at trial. Although the Court ultimately held that jurisdiction was lacking, and disposed of the case on that basis, four Justices would have reached the merits. Writing for the dissenters, Justice Douglas would have found a "clear" due process violation:

> "It is well settled that to obtain a conviction by the use of testimony known by the prosecution to be perjured offends

> due process. *Mooney* v. *Holohan*, 294 U. S. 103; *Pyle* v. *Kansas*, 317 U. S. 213. While the petition did not allege that the prosecution knew that petitioner's codefendants were lying when they implicated petitioner, the State now knows that the testimony of the only witnesses against petitioner was false. No competent evidence remains to support the conviction. Deprivation of a hearing under these circumstances amounts in my opinion to a denial of due process of law." *Id.*, at 290–291.

See also *Sanders* v. *Sullivan*, 863 F. 2d 218 (CA2 1988); cf. *Hysler* v. *Florida*, 315 U. S. 411, 413 (1942) ("Mere recantation of testimony" does not justify voiding a conviction on due process grounds). Here, the facts are far stronger than in *Durley*, as the State itself has formally vouched for the credibility of Jacobs' recantation of his confession and police officers have testified, under oath, that parts of Jacobs' confession were false.

I have long believed that serious questions are raised "when the sovereign itself takes inconsistent positions in two separate criminal proceedings against two of its citizens." *United States* v. *Powers*, 467 F. 2d 1089, 1097 (CA7 1972) (Stevens, J., dissenting), cert. denied, 410 U. S. 983 (1973); see also *United States* v. *Ott*, 489 F. 2d 872 (CA7 1973). The "heightened need for reliability" in capital cases, see *Caldwell* v. *Mississippi*, 472 U. S. 320, 323 (1985) (internal quotation marks omitted), only underscores the gravity of those questions in the circumstances of this case. At a minimum, Jacobs' execution should be stayed so that we may carefully consider his claims by way of our ordinary procedure respecting petitions for certiorari.

I respectfully dissent from the order denying the application for a stay of execution.

January 3, 1995

Certiorari Denied

No. 94–7470 (A–469). Jacobs *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. Justice Stevens, Justice Ginsburg, and Justice Breyer would grant the application for stay of execution.

JANUARY 5, 1995

Dismissal Under Rule 46

No. 94–1024. HUDDLESTON *v.* CIGNA INSURANCE CO., FKA INA UNDERWRITERS INSURANCE CO., ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 30 F. 3d 1491.

JANUARY 6, 1995

Probable Jurisdiction Noted

No. 94–631. MILLER ET AL. *v.* JOHNSON ET AL.;
No. 94–797. ABRAMS ET AL. *v.* JOHNSON ET AL.; and
No. 94–929. UNITED STATES *v.* JOHNSON ET AL. Appeals from D. C. S. D. Ga. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 864 F. Supp. 1354.

Certiorari Granted

No. 94–431. RYDER *v.* UNITED STATES. C. A. Armed Forces. Certiorari granted. Reported below: 39 M. J. 454.

No. 94–455. JOHNSON ET AL. *v.* JONES. C. A. 7th Cir. Certiorari granted. Reported below: 26 F. 3d 727.

No. 94–514. UNITED STATES *v.* GAUDIN. C. A. 9th Cir. Certiorari granted. Reported below: 28 F. 3d 943.

No. 94–555. ROCKY MOUNTAIN HOSPITAL & MEDICAL SERVICE *v.* PHILLIPS. C. A. 10th Cir. Certiorari granted. Reported below: 28 F. 3d 113.

No. 94–688. NATIONAL PRIVATE TRUCK COUNCIL, INC., ET AL. *v.* OKLAHOMA TAX COMMISSION ET AL. Sup. Ct. Okla. Certiorari granted. Reported below: 879 P. 2d 137.

No. 94–749. HURLEY ET AL. *v.* IRISH-AMERICAN GAY, LESBIAN & BISEXUAL GROUP OF BOSTON ET AL. Sup. Jud. Ct. Mass. Certiorari granted. Reported below: 418 Mass. 238, 636 N. E. 2d 1293.

No. 94–771. OKLAHOMA TAX COMMISSION *v.* CHICKASAW NATION. C. A. 10th Cir. Certiorari granted. Reported below: 31 F. 3d 964.

No. 94–859. BABBITT, SECRETARY OF THE INTERIOR, ET AL. *v.* SWEET HOME CHAPTER OF COMMUNITIES FOR A GREAT OREGON ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 17 F. 3d 1463.

No. 94–788. CITY OF MILWAUKEE *v.* CEMENT DIVISION, NATIONAL GYPSUM CO., ET AL. C. A. 7th Cir. Certiorari granted. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 31 F. 3d 581.

No. 94–834. NORTH STAR STEEL CO. *v.* THOMAS ET AL.; and
No. 94–835. CROWN CORK & SEAL CO., INC. *v.* UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC. C. A. 3d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 32 F. 3d 53.

No. 94–6187. WITTE *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 25 F. 3d 250.

JANUARY 9, 1995

Miscellaneous Orders

No. ——. BROOKS ET AL. *v.* DOE ET AL.; and
No. ——. CHIVERS *v.* NORTH SLOPE BOROUGH ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A–428. ROSENBAUM *v.* ROSENBAUM. App. Ct. Ill., 1st Dist. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. A–450. ZAKIYA, FKA ROSS *v.* UNITED STATES. D. C. Md. Application for recall and stay of mandate, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–1382. IN RE DISBARMENT OF HARROD. Disbarment entered. [For earlier order herein, see 511 U. S. 1027.]

No. D–1463. IN RE DISBARMENT OF RILEY. Disbarment entered. [For earlier order herein, see *ante*, p. 958.]

No. D–1464. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see *ante*, p. 958.]

No. D–1486. IN RE DISBARMENT OF COLLINS. It is ordered that Robert Frederick Collins, of New Orleans, La., be suspended from the practice of law in this Court and that a rule 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–1487. IN RE DISBARMENT OF OJI. It is ordered that Walter Henry Obiorah Oji, of Houston, Tex., be suspended from the practice of law in this Court and that a rule 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–1488. IN RE DISBARMENT OF JONES. It is ordered that Ronald Lee Jones, of Tallahassee, Fla., be suspended from the practice of law in this Court and that a rule 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–1489. IN RE DISBARMENT OF ISRAEL. It is ordered that William C. Israel, of Yonkers, N. Y., be suspended from the practice of law in this Court and that a rule 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–1490. IN RE DISBARMENT OF MCGEE. It is ordered that Robert Butler McGee, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule 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–1491. IN RE DISBARMENT OF KUKLA. It is ordered that Michael F. Kukla, of Crystal Lake, Ill., be suspended from the practice of law in this Court and that a rule 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–1492. IN RE DISBARMENT OF WOHLFARTH. It is ordered that Robert Michael Wohlfarth, of Annapolis, Md., be suspended from the practice of law in this Court and that a rule 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–1493. IN RE DISBARMENT OF SCOTT. It is ordered that Winfield William Scott, of Dallas, Tex., be suspended from the

practice of law in this Court and that a rule 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–1494. IN RE DISBARMENT OF OTCHERE. It is ordered that Felix B. Otchere, of Arlington, Va., be suspended from the practice of law in this Court and that a rule 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–1495. IN RE DISBARMENT OF HUMPHREYS. It is ordered that Lloyd Edwin Humphreys, of Dallas, Tex., be suspended from the practice of law in this Court and that a rule 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. 93–390. YOUGHIOGHENY & OHIO COAL CO. *v.* MCANGUES ET AL., 510 U. S. 1040. Motion of respondent Timothy Cogan for attorney's fees denied.

No. 93–1462. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. *v.* RAMON MORALES. C. A. 9th Cir. [Certiorari granted, 512 U. S. 1287.] Motion of petitioners to strike the *amici curiae* brief of National Legal Aid and Defender Association et al. denied.

No. 93–1783. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR *v.* NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. ET AL. C. A. 4th Cir. [Certiorari granted, 512 U. S. 1287.] Motion of National Association of Waterfront Employers et al. for leave to file a brief as *amici curiae* granted.

No. 93–1841. ADARAND CONSTRUCTORS, INC. *v.* PENA, SECRETARY OF TRANSPORTATION, ET AL. C. A. 10th Cir. [Certiorari granted, 512 U. S. 1288.] Motion of Maryland Women Business Entrepreneurs et al. for leave to file a brief as *amici curiae* granted. Motion of petitioner to strike Appendices B and C of respondents' brief denied.

No. 93–1883. ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* EDWARDS, GUARDIAN AD LITEM FOR EDWARDS, ET AL. C. A. 9th Cir. [Certiorari granted, 512 U. S. 1288.] Motion of Alliance for Children's Rights et al. for leave to file a brief as *amici curiae* granted.

No. 93–1935. CURTISS-WRIGHT CORP. *v.* SCHOONEJONGEN ET AL. C. A. 3d Cir. [Certiorari granted, 512 U. S. 1288.] Motion of National Association of Securities and Commercial Law Attorneys for leave to file a brief as *amicus curiae* granted.

No. 94–3. REYNOLDSVILLE CASKET CO. ET AL. *v.* HYDE. Sup. Ct. Ohio. [Certiorari granted, *ante*, p. 921.] Motion of Brown & Szaller Co. et al. for leave to file a brief as *amici curiae* granted.

No. 94–78. MICHIGAN *v.* ASHER. Ct. App. Mich. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 94–999. DOWNEY ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 94–5707. WILSON *v.* ARKANSAS. Sup. Ct. Ark. [Certiorari granted, *ante*, p. 1014.] Motion for appointment of counsel granted, and it is ordered that John Wesley Hall, Esq., of Little Rock, Ark., be appointed to serve as counsel for petitioner in this case.

No. 94–5743. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 945] denied.

No. 94–6620. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. C. A. 3d Cir.; and

No. 94–6970. IN RE MILLER. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until January 30, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 94–6391. IN RE SMITH;

No. 94–6834. IN RE HIGGINS; and

No. 94–6837. IN RE SULE. Petitions for writs of mandamus denied.

No. 94–6597. IN RE HIGGINS. Petition for writ of prohibition denied.

Certiorari Denied

No. 93–8640. GORDON *v.* PHAM TIEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 208.

No. 93–9474. BERRYMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 4th 1048, 864 P. 2d 40.

No. 93–9787. CALDWELL *v.* FELLIN. C. A. 3d Cir. Certiorari denied.

No. 94–138. MILONE *v.* CAMP, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 693.

No. 94–355. ROBERTSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 39 M. J. 211.

No. 94–358. DUCHESNE COUNTY ET AL. *v.* ARNOLD. C. A. 10th Cir. Certiorari denied. Reported below: 26 F. 3d 982.

No. 94–393. GUETERSLOH *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 94–458. LOCAL 783, BRIDGE STRUCTURAL & ORNAMENTAL IRON WORKERS *v.* BE&K CONSTRUCTION CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 3d 1459.

No. 94–461. VENNES *v.* AN UNKNOWN NUMBER OF UNIDENTIFIED AGENTS OF THE UNITED STATES OF AMERICA. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 1448.

No. 94–481. OLIVEIRA ET AL. *v.* MAYER ET AL.; and
No. 94–526. MAYER ET AL. *v.* OLIVEIRA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 642.

No. 94–520. SULLINS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 25 F. 3d 601.

No. 94–529. LOT 5, FOX GROVE, ALACHUA COUNTY, FLORIDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 23 F. 3d 359.

No. 94–539. UNITED PARCEL SERVICE, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 17 F. 3d 1518.

No. 94–540. COUNTY OF FULTON ET AL. *v.* WHALEN, INDIVIDUALLY AND AS PARENT AND LEGAL GUARDIAN OF WHALEN, AN INFANT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 19 F. 3d 828.

No. 94–542. Allied-Signal Aerospace Co., Garrett Engine Division and Garrett Auxiliary Power Division *v.* United States et al. C. A. Fed. Cir. Certiorari denied. Reported below: 28 F. 3d 1188.

No. 94–549. Lakewood Engineering & Manufacturing, Inc. *v.* National Labor Relations Board et al. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1216.

No. 94–552. Schneider et ux., Individually and as Guardians of Schneider *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 1327.

No. 94–554. Scales, Individually and as Trustee for the Bert F. Scales 1981 Trust, et al. *v.* Federal Deposit Insurance Corporation, as Receiver for MBank Abilene, N. A. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 654.

No. 94–557. Florida et al. *v.* Platt et al. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 356.

No. 94–575. Chaplin *v.* Baker. Sup. Ct. Minn. Certiorari denied. Reported below: 517 N. W. 2d 911.

No. 94–580. Koehler *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 24 F. 3d 867.

No. 94–584. Bilby *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 39 M. J. 467.

No. 94–613. Bolden *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 639 So. 2d 721.

No. 94–624. Dawson et al. *v.* Halperin, Commissioner, New York State Division of Housing and Community Renewal, et al. Ct. App. N. Y. Certiorari denied. Reported below: 83 N. Y. 2d 996, 640 N. E. 2d 143.

No. 94–630. Bell *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 77.

No. 94–638. Michigan Department of Mental Health *v.* Louisiana Homes, Inc., et al. Ct. App. Mich. Certiorari denied. Reported below: 203 Mich. App. 213, 511 N. W. 2d 696.

No. 94–645. Posner *v.* Securities and Exchange Commission. C. A. 2d Cir. Certiorari denied. Reported below: 16 F. 3d 520.

No. 94–654. REALBUTO *v.* HOWE, INDIVIDUALLY AND AS COMMISSIONER OF THE NEW YORK STATE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 620.

No. 94–662. CITY OF HENDERSON ET AL. *v.* NEVADA ENTERTAINMENT INDUSTRIES, INC., ET AL.; and

No. 94–786. NEVADA ENTERTAINMENT INDUSTRIES, INC., ET AL. *v.* CITY OF HENDERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 131.

No. 94–675. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 116.

No. 94–682. ROBINOWITZ *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER FOR GIBRALTAR SAVINGS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 951.

No. 94–706. WHITE SWAN, LTD. *v.* NATURE CO. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 638.

No. 94–714. RAINE, TRUSTEE OF THE TELEVISION TRUST AGREEMENT *v.* GLEASON, FORMERLY PERSONAL REPRESENTATIVE OF THE ESTATE OF GLEASON, DECEASED. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 631 So. 2d 321.

No. 94–720. DEVRIES ET AL. *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 162 Vt. 617, 647 A. 2d 1013.

No. 94–723. LILBURN *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 265 Mont. 258, 875 P. 2d 1036.

No. 94–729. KRAUSE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 28 F. 3d 1024.

No. 94–730. CICIPPIO ET AL. *v.* ISLAMIC REPUBLIC OF IRAN. C. A. D. C. Cir. Certiorari denied. Reported below: 30 F. 3d 164.

No. 94–734. LUSSIER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 205 App. Div. 2d 910, 613 N. Y. S. 2d 466.

No. 94–735. ROCKWOOD *v.* O'CONNELL ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–741. HILDEBRAND ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 28 F. 3d 1024.

No. 94–743. ASSOCIATION FOR RETARDED CITIZENS OF CONNECTICUT, INC., ET AL. *v.* THORNE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 30 F. 3d 367.

No. 94–747. HUBER *v.* DANNING, TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 32 F. 3d 572.

No. 94–756. LONG ISLAND RAILROAD CO. *v.* MARCHICA. C. A. 2d Cir. Certiorari denied. Reported below: 31 F. 3d 1197.

No. 94–757. RICCHIO ET AL. *v.* POESNECKER ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 158 Pa. Commw. 459, 631 A. 2d 1097.

No. 94–759. JOB *v.* WELLS FARGO NATIONAL BANK, N. A. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 94–762. HININGER *v.* CAN-AM INDUSTRIES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 124.

No. 94–763. FIRST NATIONWIDE BANK *v.* GELT FUNDING CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 27 F. 3d 763.

No. 94–764. GOLDGAR *v.* OFFICE OF ADMINISTRATION, EXECUTIVE OFFICE OF THE PRESIDENT. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 32.

No. 94–765. GOODMAN HOLDINGS ET AL. *v.* RAFIDAIN BANK. C. A. D. C. Cir. Certiorari denied. Reported below: 26 F. 3d 1143.

No. 94–769. BELL *v.* LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 565.

No. 94–772. WATSON *v.* THOMAS. Ct. Civ. App. Ala. Certiorari denied. Reported below: 646 So. 2d 84.

No. 94–773. Q–1 Motor Express, Inc. *v.* National Labor Relations Board. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 473.

No. 94–778. Elford *v.* Elford. Ct. App. Wash. Certiorari denied.

No. 94–779. LeBlanc et al. *v.* Ward Lake Drilling, Inc. C. A. 6th Cir. Certiorari denied.

No. 94–782. Constant et al. *v.* Ray et al. C. A. 9th Cir. Certiorari denied.

No. 94–783. Pensacola Construction Co. *v.* Tyger Construction Co., Inc. C. A. 4th Cir. Certiorari denied. Reported below: 29 F. 3d 137.

No. 94–784. Town of Longboat Key *v.* Reserve, Ltd. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1374.

No. 94–787. Gibas *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 184 Wis. 2d 355, 516 N. W. 2d 785.

No. 94–789. Tanner *v.* Illinois Court of Claims et al. Sup. Ct. Ill. Certiorari denied. Reported below: 156 Ill. 2d 567, 638 N. E. 2d 1126.

No. 94–791. First Assembly of God of Naples, Florida, Inc. *v.* Collier County, Florida. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 419 and 27 F. 3d 526.

No. 94–792. Hallco Manufacturing Co., Inc., et al. *v.* Foster et al. C. A. Fed. Cir. Certiorari denied. Reported below: 34 F. 3d 1079.

No. 94–794. Garmon *v.* Alabama State Bar. Sup. Ct. Ala. Certiorari denied. Reported below: 662 So. 2d 289.

No. 94–800. Rimert *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 315 S. C. 527, 446 S. E. 2d 400.

No. 94–803. Knighten *v.* Cave & McKay et al. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 566.

No. 94–808. SMITH *v.* KELLY, AKA SIRBELLO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 55.

No. 94–809. TENNESSEE STUDENT ASSISTANCE CORPORATION *v.* CHEESMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 356.

No. 94–817. HARRIS COUNTY SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSIONERS ET AL. *v.* STEVERSON. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 666.

No. 94–819. TASSIO *v.* SOPER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 630.

No. 94–821. GIBBONS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 874 S. W. 2d 164.

No. 94–823. NELSON *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 94–824. CROSBY *v.* HAWAII ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 76 Haw. 332, 876 P. 2d 1300.

No. 94–825. BRANDON *v.* TRAVELERS INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 1321.

No. 94–826. JOHNSON & HIGGINS OF CALIFORNIA ET AL. *v.* STEINER CORP. C. A. 10th Cir. Certiorari denied. Reported below: 31 F. 3d 935.

No. 94–828. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. *v.* MOYO. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 982.

No. 94–832. WIERBICKI *v.* NORFOLK SOUTHERN CORP. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1099.

No. 94–836. ALEXANDER *v.* PATTERSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 1068.

No. 94–837. DENNIS *v.* DENNIS. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 274.

No. 94–840. ALARID ET AL. *v.* SECRETARY, NEW MEXICO DEPARTMENT OF TAXATION AND REVENUE. Ct. App. N. M. Certiorari denied. Reported below: 118 N. M. 23, 878 P. 2d 341.

No. 94–846. PETERSON ET AL. *v.* FISHER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 628.

No. 94–848. SHOWBOAT OPERATING CO., DBA SHOWBOAT HOTEL & CASINO *v.* STEINER, ADMINISTRATOR OF THE ESTATE OF STEINER, DECEASED. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 1459.

No. 94–850. BROWN *v.* FLORIDA UNEMPLOYMENT APPEALS COMMISSION ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 633 So. 2d 36.

No. 94–853. CAPUTO *v.* COMPUCHEM LABORATORIES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1485.

No. 94–854. YODER ET AL. *v.* ELKHART COUNTY AUDITOR ET AL. Ct. App. Ind. Certiorari denied. Reported below: 632 N. E. 2d 369.

No. 94–856. GUZMAN *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied.

No. 94–857. WINTHER *v.* CITY OF PORTLAND. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1119.

No. 94–860. L. E. S. PROPERTIES, HOTEL VENTURE *v.* WESTIN HOTEL CO. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–861. DOW CORNING CORP. *v.* HOPKINS. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 1116.

No. 94–862. BRUMLEY *v.* DEPARTMENT OF LABOR. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 746.

No. 94–866. MURRAY *v.* NATIONAL BROADCASTING CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–869. PERSINGER *v.* CARMAZZI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 563.

No. 94–871. MEREDITH *v.* SCARBOROUGH ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 662 So. 2d 290.

No. 94–872. BONGIOVANNI ET AL. *v.* SAN FILIPPO. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 424.

No. 94–874. PAYNE *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 94–876. LENNON ET AL. *v.* ALEXANDER, EXECUTOR OF THE ESTATE OF QUADE, DECEASED. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 1355.

No. 94–877. SMITH *v.* FRUIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 646.

No. 94–882. KLEVE *v.* BOARD OF GREEN TOWNSHIP TRUSTEES. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 94–883. VIRGINIA STATE CORPORATION COMMISSION *v.* NATIONAL HOME INSURANCE CO. (A RISK RETENTION GROUP). Sup. Ct. Va. Certiorari denied. Reported below: 248 Va. 161, 444 S. E. 2d 711.

No. 94–884. ZAHRAN ET AL. *v.* FRANKENMUTH MUTUAL INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 1436.

No. 94–887. WEST *v.* COUNTY OF KERN ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 94–893. WAYCASTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 558.

No. 94–899. NIXON, ATTORNEY GENERAL OF MISSOURI *v.* LYNCH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 336.

No. 94–900. BAYOU DES FAMILLES DEVELOPMENT CORP. ET AL. *v.* WEST JEFFERSON LEVEE DISTRICT. Sup. Ct. La. Certiorari denied. Reported below: 640 So. 2d 1258.

No. 94–901. SANDLIN *v.* CORPORATE INTERIORS, INC., ET AL. Ct. App. Colo. Certiorari denied.

No. 94–912. HARRIS ET AL. *v.* DAVIDSON. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 963.

No. 94–918. HAASS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 902.

No. 94–933. WILLIAMS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 216.

No. 94–937. MEREX A. G. *v.* FAIRCHILD WESTON SYSTEMS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 821.

No. 94–940. MIGDALECK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 566.

No. 94–945. VITI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1061.

No. 94–950. GUTIERREZ *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 336 Md. 1, 646 A. 2d 389.

No. 94–954. WOODWARD *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 94–962. JOHNSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 31 F. 3d 1208.

No. 94–964. HAMILTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 22.

No. 94–976. NORRIS *v.* OKLAHOMA CITY UNIVERSITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1115.

No. 94–1016. MONTANINO *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 364.

No. 94–1021. WHITE ET AL. *v.* MOULDER, CHIEF OF POLICE OF DES MOINES, IOWA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 80.

No. 94–1028. SELLERS, BY AND THROUGH HER GUARDIAN, NATURAL MOTHER, AND NEXT FRIEND, SELLERS, ET AL. *v.* BAER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 895.

No. 94–5475. KARR *v.* CARPER, GOVERNOR OF DELAWARE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 303.

No. 94–5513. HERMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–5522. BARBER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 879 S. W. 2d 889.

No. 94–5579. GARDNER *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 94–5650. ORTIZ *v.* DUBOIS, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 19 F. 3d 708.

No. 94–5747. LEDFORD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 60, 439 S. E. 2d 917.

No. 94–5788. DAVIS *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–5910. MIGHTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–5989. BUCKLEY *v.* FITZSIMMONS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 20 F. 3d 789.

No. 94–6015. SUTHERLAND *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 633 So. 2d 976.

No. 94–6038. WILKERSON *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 498.

No. 94–6045. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–6048. MILTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 203.

No. 94–6064. FLEMING *v.* UNITED STATES POSTAL SERVICE AIR MAIL FACILITY AT O'HARE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 259.

No. 94–6094. HAMILTON *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 859.

No. 94–6112. FORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1271.

No. 94–6162. RICHARDSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 879 S. W. 2d 874.

No. 94–6173. GALAVIZ-MEDINA *v.* WOOTEN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 27 F. 3d 487.

No. 94–6183. PATON *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6195. MYERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 826.

No. 94–6211. FOWLIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 1059 and 1070.

No. 94–6216. CARR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 25 F. 3d 1194.

No. 94–6227. WHEATFALL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 882 S. W. 2d 829.

No. 94–6238. FAHY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 537 Pa. 533, 645 A. 2d 199.

No. 94–6251. ENGLERT *v.* SMALL BUSINESS ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 105.

No. 94–6270. CAZES *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 875 S. W. 2d 253.

No. 94–6287. STREET *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 636 So. 2d 1297.

No. 94–6305. BAIZA HERNANDEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6307. LACKEY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 486.

No. 94–6317. CERVANTES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 1151.

No. 94–6350. KELLY *v.* LAFACE RECORDS ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–6356. ROBERTS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 744.

No. 94–6397. LANCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 117.

No. 94–6532. PEDROZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1125.

No. 94–6553. BEJJANI *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 406.

No. 94–6559. HAWKINS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6560. OATS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 638 So. 2d 20.

No. 94–6571. GAUDIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 943.

No. 94–6578. GEITZ *v.* THIERET ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 3d 1216.

No. 94–6586. GALLOWAY *v.* THURMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 94–6593. TATE *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 24 F. 3d 242.

No. 94–6594. WALTON *v.* LINDLER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–6595. BLEVINS *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. Sup. Ct. Ariz. Certiorari denied.

No. 94–6599. FISHER *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 94–6605. GARDNER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 640.

No. 94–6613. WOODS *v.* ROBERTSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 625.

No. 94–6618. WAKEFIELD *v.* EGLES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1173.

No. 94–6622. CANCEL *v.* THURMAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6623. GRANT *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–6628. BROUSSARD *v.* EDWARDS, GOVERNOR OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 237.

No. 94–6646. FARR *v.* GRAY & END ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–6656. CARABALLO *v.* BEYER ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–6657. SILAS *v.* ROCHE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 634.

No. 94–6658. AYERS *v.* EVANS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 141.

No. 94–6660. GRANT *v.* WONG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 570.

No. 94–6661. HUTTO *v.* NORTH AMERICAN VAN LINES. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 37.

No. 94–6664. LARSON *v.* MOORE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 33 F. 3d 57.

No. 94–6665. MAYBERRY *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied. Reported below: 447 Mich. 978, 523 N. W. 2d 627.

No. 94–6674. WARNER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 433 Pa. Super. 638, 638 A. 2d 272.

No. 94–6676. GREENE *v.* MCFADDEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–6679. GIBBS *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, CORRECTIONS SERVICES, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1490.

No. 94–6680. GREENWOOD *v.* BECHILL. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 1068.

No. 94–6682. HUFFMAN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–6685. HOLLOWAY *v.* KAISER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 94–6688. REAMS *v.* ROCHA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 139.

No. 94–6689. POTE *v.* SHILLINGER, ATTORNEY GENERAL OF WYOMING. C. A. 10th Cir. Certiorari denied. Reported below: 35 F. 3d 574.

No. 94–6691. MAHALEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 332 N. C. 583, 423 S. E. 2d 58.

No. 94–6692. DOE *v.* IOWA ET AL. Sup. Ct. Iowa. Certiorari denied.

No. 94–6698. DALIS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 141.

No. 94–6699. BROWN *v.* CALIFORNIA. Munic. Ct. of Shasta County, Cal. Certiorari denied.

No. 94–6700. JUDD *v.* GONZALES, SECRETARY OF STATE OF NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 94–6702. SAUNDERS *v.* THOMPSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 94–6705. PALOMO ET AL. *v.* TERRITORY OF GUAM. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 368.

No. 94–6708. ROBINSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 336 N. C. 78, 443 S. E. 2d 306.

No. 94–6711. PUFFER *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 132.

No. 94–6712. OGDEN *v.* SAN JUAN COUNTY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 32 F. 3d 452.

No. 94–6717. GILLIAM *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 3d 17, 635 N. E. 2d 1242.

No. 94–6719. LONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 22 F. 3d 304.

No. 94–6721. SIMPSON *v.* GROOSE, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 1070.

No. 94–6722. WEAKLEY ET UX. *v.* SECURITY STATE BANK & TRUST ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 468.

No. 94–6730. OKOCHA *v.* CLEVELAND BAR ASSN. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 398, 632 N. E. 2d 1284.

No. 94–6733. TUCKER *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 137 N. J. 259, 645 A. 2d 111.

No. 94–6735. HOWARD *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 566.

No. 94–6738. TRIPATI *v.* ARPAIO, MARICOPA COUNTY SHERIFF. Sup. Ct. Ariz. Certiorari denied.

No. 94–6742. BRYSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 876 P. 2d 240.

No. 94–6744. HARTFORD *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY. Ct. App. Ariz. Certiorari denied.

No. 94–6747. SIMONSON *v.* SIMONSON. Ct. App. Minn. Certiorari denied.

No. 94–6748. AZIZ *v.* WRIGHT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 587.

No. 94–6749. AZIZ *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 1070.

No. 94–6750. AZIZ *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 1070.

No. 94–6751. FLAYTER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 185 Wis. 2d 709, 520 N. W. 2d 110.

No. 94–6752. GAGLIARDI *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 418 Mass. 562, 638 N. E. 2d 20.

No. 94–6754. KNOX *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 34 F. 3d 964.

No. 94–6755. SESARIO DEPINEDA *v.* ZAVARAS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 34 F. 3d 1076.

No. 94–6757. PADILLA *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. Ct. App. N. Y. Certiorari denied. Reported below: 84 N. Y. 2d 850, 641 N. E. 2d 161.

No. 94–6759. MASON *v.* LOS ANGELES SUPERIOR COURT APPELLATE DEPARTMENT. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6764. WILSON *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 433.

No. 94–6768. DEARINGER *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied.

No. 94–6773. ADAMS *v.* LEAPLEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 31 F. 3d 713.

No. 94–6775. CRUMMIE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–6777. SUMMERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6779. JARDINE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6780. JACKSON *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–6783. KISKILA ET UX. *v.* BUSINESS EXCHANGE, INC., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–6784. GRAVES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6786. FORD *v.* WILLIAMS ET AL. Sup. Ct. Cal. Certiorari denied.

No. 94–6788. DENHAM *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 245.

No. 94–6791. HOLLOWAY *v.* OLIVAREZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 246.

No. 94–6792. BRUNN *v.* UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 254 Ill. App. 3d 1118, 667 N. E. 2d 1110.

No. 94–6795. BRADVICA *v.* JONES, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 94–6796. BETKA *v.* SMITH ET UX. Cir. Ct. Ore., Clackamas County. Certiorari denied.

No. 94–6798. CHATTERS *v.* THURMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6799. REYES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6800. LONG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6807. REESE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 166.

No. 94–6808. MCCLELLAN *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 93 Ohio App. 3d 315, 638 N. E. 2d 593.

No. 94–6809. LOVE *v.* SCOTT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 629.

No. 94–6811. BROWN *v.* NOBLES. C. A. 6th Cir. Certiorari denied.

No. 94–6812. BURLEY *v.* MCDONNELL DOUGLAS HELICOPTER CO. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1111.

No. 94–6813. GOSSAGE *v.* BARBOUR, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER; and THELAN *v.* BARBOUR, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER. Ct. App. Wash. Certiorari denied.

No. 94–6814. WISE *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 879 S. W. 2d 494.

No. 94–6816. HESS ET AL. *v.* HARDEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–6819. HILL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1383.

No. 94–6820. FINKEL *v.* NEW YORK CITY HOUSING AUTHORITY. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–6824. MILLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 94–6825. WILLIAMS *v.* BORG & WARNER AUTOMOTIVE ELECTRONICS & MECHANICAL SYSTEM CORP. C. A. 8th Cir. Certiorari denied. Reported below: 16 F. 3d 1230.

No. 94–6826. HOLIDAY *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 570.

No. 94–6832. COTTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 206 App. Div. 2d 979, 616 N. Y. S. 2d 266.

No. 94–6835. GRISSO *v.* NEW MADRID COUNTY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1394.

No. 94–6836. SIZEMORE *v.* TURNER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 35 F. 3d 568.

No. 94–6840. SMITH *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–6841. WITCHER *v.* WITCHER. Super. Ct. Pa. Certiorari denied. Reported below: 433 Pa. Super. 14, 639 A. 2d 1187.

No. 94–6842. PEARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1381.

No. 94–6847. RUSSELL *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 37 Mass. App. 152, 638 N. E. 2d 37.

No. 94–6848. NESMITH *v.* MCKELLAR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 3d 423.

No. 94–6849. LUNA *v.* RUSSELL, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 3d 561, 639 N. E. 2d 1168.

No. 94–6850. MAKEMSON *v.* MCBRIDE, SUPERINTENDENT, WESTVILLE CORRECTIONAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 570.

No. 94–6851. RODRIGUEZ MENDOZA *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 22 F. 3d 1094.

No. 94–6852. QUINTO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 983 F. 2d 1088.

No. 94–6855. CORONA *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1381.

No. 94–6857. MIMS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–6861. IVY *v.* MOORE, FORMER DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 31 F. 3d 634.

No. 94–6862. GOCKEN *v.* CITY OF AUBURN, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–6863. CASSIDY *v.* INDUSTRIAL INDEMNITY CO. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–6864. ATKINS *v.* TANDY CORP. ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–6870. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL.; and WILLIAMS *v.* NATIONAL ASSOCIATION OF LETTER CARRIERS OF THE USA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 35 F. 3d 575.

No. 94–6871. DE LA CERDA *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–6872. GIFFORD *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 565.

No. 94–6874. POWERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–6875. ONUORAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 110.

No. 94–6877. DASH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 F. 3d 572.

No. 94–6878. CELESTINE *v.* ROCHA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 1424.

No. 94–6884. GHAZALI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6885. JONES *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–6886. GRAY *v.* ALFORD, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1491.

No. 94–6887. HUBBARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 22 F. 3d 1410.

No. 94–6888. JUELS *v.* DEUTSCHE BANK AG. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 391.

No. 94–6889. SEVERE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 444.

No. 94–6890. COLEMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 881 S. W. 2d 344.

No. 94–6894. TORRES *v.* UNITED STATES;
No. 94–6945. TORRES *v.* UNITED STATES; and
No. 94–7041. SANTOYO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 567.

No. 94–6895. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 557.

No. 94–6900. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 94–6901. ROBINSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 630.

No. 94–6902. RISHOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1118.

No. 94–6903. EASON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 336 N. C. 730, 445 S. E. 2d 917.

No. 94–6904. REVILLA *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 877 P. 2d 1143.

No. 94–6905. RASHEED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–6906. MARIN-PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1382.

No. 94–6907. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–6908. WILLIS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–6911. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–6913. FLEMING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 557.

No. 94–6915. FRIEBERGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 916.

No. 94–6917. HOLMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–6918. CRANK *v.* TOLLE, JUDGE, CRIMINAL DISTRICT COURT OF TEXAS, DALLAS COUNTY. Sup. Ct. Tex. Certiorari denied.

No. 94–6919. GARRETT *v.* ARTHUR ANDERSEN & CO. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 254.

No. 94–6923. RENNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 642.

No. 94–6926. ANDRES PAEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–6927. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 53.

No. 94–6928. LEAPHART *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1172.

No. 94–6930. THAKKAR *v.* DEBEVOISE. C. A. 3d Cir. Certiorari denied.

No. 94–6932. ZUNIGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 572.

No. 94–6934. BYSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 1165.

No. 94–6936. CHANDLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1383.

No. 94–6938. SIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–6942. JORGE TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 33 F. 3d 130.

No. 94–6943. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–6944. SPAULDING *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 559.

No. 94–6950. JOHNSON ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 1487.

No. 94–6952. HENSLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1378.

No. 94–6953. SPEER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 605.

No. 94–6954. HICKSON, AKA PRATT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 559.

No. 94–6955. YOUNG *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 185 Wis. 2d 920, 520 N. W. 2d 292.

No. 94–6959. FISHER *v.* NORTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 336 N. C. 684, 445 S. E. 2d 866.

No. 94–6960. HESS *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 632.

No. 94–6962. MOBLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–6964. MOREHEAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1381.

No. 94–6965. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 33 F. 3d 57.

No. 94–6969. OUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–6972. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 613.

No. 94–6973. CHAPMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 49.

No. 94–6975. BLACKWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 1068.

No. 94–6976. DAUGAARD *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 231 Conn. 195, 647 A. 2d 342.

No. 94–6977. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1075.

No. 94–6978. VALENTINE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1173.

No. 94–6979. RUIZ-CASES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 94–6985. HARBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 F. 3d 271.

No. 94–6986. HURTADO-ROJAS *v.* UNITED STATES; and
No. 94–6988. ROJAS-HURTADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–6989. MCGAHEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–6993. MIZKUN *v.* WIDNALL, SECRETARY OF THE AIR FORCE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–6996. LENIS *v.* UNITED STATES MARSHAL. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 49.

No. 94–6998. BROWN *v.* MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–7001. CAIN *v.* UNITED STATES; and
No. 94–7051. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 53.

No. 94–7008. SIAW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1075.

No. 94–7009. SEGARS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 31 F. 3d 655.

No. 94–7012. SORIANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 F. 3d 573.

No. 94–7014. JONES, AKA BARNARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–7016. MILES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–7019. WISHON *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1121.

No. 94–7021. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 562.

No. 94–7024. TOWNSEND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 F. 3d 262.

No. 94–7026. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 33 F. 3d 788.

No. 94–7027. AMIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1485.

No. 94–7034. HINTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 F. 3d 817.

No. 94–7036. HUMMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–7040. SKINNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 37 F. 3d 1564.

No. 94–7046. ANDERSON *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1380.

No. 94–7049. BRAZZELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 576.

No. 94–7050. MUSTILIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 573.

No. 94–7052. PRATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 31 F. 3d 625.

No. 94–7053. LAW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 34 F. 3d 1077.

No. 94–7057. LAWRENCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 34 F. 3d 44.

No. 94–7063. PULIDO *v.* UNITED STATES;
No. 94–7072. GOMEZ *v.* UNITED STATES; and
No. 94–7105. PREVAL PLANAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1407.

No. 94–7064. PEERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–7065. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1500.

No. 94–7067. MATRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1396.

No. 94–7071. BARRIENTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–7073. JESSIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 572.

No. 94–7077. CARTER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 185 Wis. 2d 709, 520 N. W. 2d 110.

No. 94–7080. COX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1074.

No. 94–7081. MENDOZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 36 F. 3d 1098.

No. 94–7082. BARBER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–7084. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1378.

No. 94–7093. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 557.

No. 94–7097. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1094.

No. 94–7103. ALONSO MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 576.

No. 94–7106. SORRENTINO PIMENTEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 799.

No. 94–7109. RUIZ SIFUENTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1047.

No. 94–7120. SARCENO-BARRIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 135.

No. 94–7121. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 558.

No. 94–7126. CONZETT *v.* SOUTH CAROLINA. Ct. Common Pleas of Richland County, S. C. Certiorari denied.

No. 94–7179. WATTS *v.* CHAPLEAU, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1217.

No. 94–7198. LOHNES *v.* CLASS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 94–438. ELLINGSWORTH, WARDEN, ET AL. *v.* REYNOLDS. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 23 F. 3d 756.

No. 94–799. WILLIAMS, SUPERINTENDENT, FULTON CORRECTIONAL FACILITY *v.* VIDAL. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 31 F. 3d 67.

No. 94–881. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* HILL. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 28 F. 3d 832.

No. 94–650. EYAK NATIVE VILLAGE ET AL. *v.* EXXON CORP. ET AL.; and

No. 94–855. EXXON CORP. ET AL. *v.* EYAK NATIVE VILLAGE ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 25 F. 3d 773.

No. 94–776. GILLETTE CO. *v.* MICHIGAN DEPARTMENT OF TREASURY. Ct. App. Mich. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 198 Mich. App. 303, 497 N. W. 2d 595.

No. 94–689. DUNCAN ENERGY CO. ET AL. *v.* THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION ET AL. C. A. 8th Cir. Motion of Rocky Mountain Oil & Gas Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 27 F. 3d 1294.

No. 94–766. DUFFY ET AL. *v.* WETZLER, INDIVIDUALLY AND AS COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of National Association of Retired Federal Employees et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 207 App. Div. 2d 375 and 378, 616 N. Y. S. 2d 48 and 213.

No. 94–810. ROY B. TAYLOR SALES, INC. *v.* HOLLYMATIC CORP. C. A. 5th Cir. Motion of Independent Distributors Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 28 F. 3d 1379.

No. 94–833. ASARCO INC. *v.* LOUISIANA-PACIFIC CORP. ET AL. C. A. 9th Cir. Motions of American Petroleum Institute et al. and Alaska Miners Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 24 F. 3d 1565.

No. 94–843. 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.

No. 94–865. RUTGERSWERKE AG *v.* BETTIS ET AL. C. A. 6th Cir. Motion of Federal Republic of Germany for leave to file a brief as *amicus curiae* granted. Certiorari denied.

Rehearing Denied

No. 93–9007. MOSS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 831;

No. 93–9344. BANNISTER *v.* ARMONTROUT, ASSISTANT DIRECTOR/ZONE II, MISSOURI DIVISION OF ADULT INSTITUTIONS, ET AL., *ante*, p. 960;

No. 93–9707. CAIN *v.* VICKERS ET AL., *ante*, p. 861;

No. 94–508. OPTIMAL DATA CORP. *v.* UNITED STATES, *ante*, p. 1000;

No. 94–524. LEE *v.* STATE BAR OF CALIFORNIA, *ante*, p. 965;

No. 94–535. ZISK ET AL. *v.* PLACER COUNTY SUPERIOR COURT (WALKER, REAL PARTY IN INTEREST), *ante*, p. 983;

No. 94–5032. WHITEHEAD *v.* GREER ET AL., *ante*, p. 966;

No. 94–5207. DE LA FE *v.* UNITED STATES, *ante*, p. 989;

No. 94–5354. OVERLY *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *ante*, p. 966;

No. 94–5610. PORTER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1009;

No. 94–5626. JOHNSON *v.* DUTTON, WARDEN, ET AL., *ante*, p. 935;

No. 94–5756. MATA *v.* RICKETTS ET AL., *ante*, p. 968;

No. 94–5814. DOKES *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 968;

No. 94–5822. MOON *v.* ZANT, WARDEN, *ante*, p. 968;

No. 94–5859. GILES *v.* SNOW ET AL., *ante*, p. 969;

No. 94–5892. MCFADDEN *v.* SEARS, ROEBUCK & CO. ET AL., *ante*, p. 970;

No. 94–5907. JONES *v.* NORTH CAROLINA, *ante*, p. 1003;

No. 94–5954. SHORTER *v.* SMITH, WARDEN, ET AL., *ante*, p. 953;

No. 94–5956. KERPAN ET UX. *v.* DAVIS, *ante*, p. 971;

No. 94–5963. GOMEZ *v.* BRUN APARTMENTS, *ante*, p. 972;

No. 94–6010. MARCH *v.* RUNYON, POSTMASTER GENERAL, ET AL., *ante*, p. 973;

No. 94–6033. REBAR *v.* MARSH, SECRETARY OF THE ARMY, ET AL., *ante*, p. 974;

No. 94–6065. AZAR *v.* HEALTH ALLIANCE PLAN, *ante*, p. 974;

No. 94–6167. RIMELL *v.* UNITED STATES, *ante*, p. 976;

No. 94–6341. IN RE SEAGRAVE, *ante*, p. 985;

No. 94–6360. LAZOR *v.* SPERRY RAND CORP., UNIVAC DIVISION (NKA UNISYS CORP.), *ante*, p. 1006;

No. 94–6417. MCAFEE *v.* TEXAS, *ante*, p. 1026;

No. 94–6442. RANDALL *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF VOLUSIA COUNTY ET AL., *ante*, p. 1026;

No. 94–6459. BRASLAVSKY *v.* BOARD OF TRUSTEES OF UNIVERSITY OF ILLINOIS, *ante*, p. 1008;

No. 94–6493. DUBYAK *v.* SMITH, WARDEN, *ante*, p. 1026; and

No. 94–6530. PFEIFFER *v.* ARIZONA ET AL., *ante*, p. 1027. Petitions for rehearing denied.

No. 93–1782. SWEENEY, INDIVIDUALLY AND AS TRUSTEE OF THE MAPLE LEAF TRUST AND OF THE CANADIAN REALTY TRUST, ET AL. *v.* RESOLUTION TRUST CORPORATION ET AL., *ante*, p. 914. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 93–9353. SMITH *v.* DIXON, WARDEN, *ante*, p. 841; and

No. 94–5692. GILMORE *v.* LOCAL 295, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL., *ante*, p. 936. Motions for leave to file petitions for rehearing denied.

No. 94–459. BISHOP *v.* GEORGIA STATE BAR, *ante*, p. 987. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 94–6158. DEMPSEY *v.* TURNER BROADCASTING SYSTEM ET AL., *ante*, p. 1004. Motion of petitioner to defer consideration of petition for rehearing denied. Petition for rehearing denied.

No. 94–5895 (A–489). ZIMMERMAN *v.* TEXAS, *ante*, p. 1021. 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.

JANUARY 11, 1995

Dismissal Under Rule 46

No. 94–100. FAULKNER *v.* UNITED STATES, *ante*, p. 870. Petition for rehearing dismissed under this Court's Rule 46.

Miscellaneous Order

No. A–510 (94–7612). POLLARD *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, granted pending the

disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

January 13, 1995

Certiorari Granted

No. 94–780. Capitol Square Review and Advisory Board et al. *v.* Pinette et al. C. A. 6th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 23, 1995. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 1995. This Court's Rule 29.2 does not apply. Reported below: 30 F. 3d 675.

No. 94–790. Reno, Attorney General, et al. *v.* Koray. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 23, 1995. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 1995. This Court's Rule 29.2 does not apply. Reported below: 21 F. 3d 558.

No. 94–820. Metropolitan Stevedore Co. *v.* Rambo et al. C. A. 9th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 23, 1995. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 1995. This Court's Rule 29.2 does not apply. Reported below: 28 F. 3d 86.

January 16, 1995

Certiorari Denied

No. 94–7660 (A–516). Marquez *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.

JANUARY 17, 1995

Dismissal Under Rule 46

No. 94–960. SYNBIOTICS CORP. *v.* IDEXX LABORATORIES, INC., ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 34 F. 3d 1080.

Certiorari Granted—Vacated and Remanded

No. 93–1805. MIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Tome* v. *United States*, *ante*, p. 150. Reported below: 12 F. 3d 217.

No. 94–564. UNITED STATES *v.* RUDDELL. C. A. 9th 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 *United States* v. *X-Citement Video, Inc.*, *ante*, p. 64. Reported below: 2 F. 3d 1159.

No. 94–6261. TOMLIN *v.* UNITED STATES. C. A. 9th 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 *Tome* v. *United States*, *ante*, p. 150. Reported below: 28 F. 3d 110.

Certiorari Dismissed

No. 94–7612. POLLARD *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari dismissed. The stay of execution of sentence of death is reinstated. This stay shall remain in effect pending the District Court's consideration of petitioner's petition for writ of habeas corpus.

Miscellaneous Orders. (See also No. 106, Orig., *ante*, p. 177.)

No. ——. SIGLER *v.* TWYFORD ET AL. Motion for leave to file motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [*ante*, p. 923] denied.

No. ——. SUMMERFIELD *v.* HOLCOMB ET AL.; and

No. ——. R & R MECHANICAL, INC. *v.* ST. PAUL FIRE & MARINE INSURANCE CO. ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. ——-——. FADAYINI *v.* UNITED STATES. Motion of Gregory Burr MacCaulay to withdraw as Court-appointed counsel for petitioner granted.

No. D–1466. IN RE DISBARMENT OF WALSH. Disbarment entered. [For earlier order herein, see *ante,* p. 984.]

No. D–1467. IN RE DISBARMENT OF WILSON. Disbarment entered. [For earlier order herein, see *ante,* p. 997.]

No. D–1493. IN RE DISBARMENT OF SCOTT. Due to mistaken identity, the order entered January 9, 1995 [*ante,* p. 1073], suspending Winfield William Scott, of Dallas, Tex., from the Bar of this Court is vacated, and the rule to show cause is discharged.

No. D–1496. IN RE DISBARMENT OF HOTZE. It is ordered that T. Wilson Hotze, of Richmond, Va., be suspended from the practice of law in this Court and that a rule 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. 93–1408. NEW YORK STATE CONFERENCE OF BLUE CROSS & BLUE SHIELD PLANS ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.;

No. 93–1414. PATAKI, GOVERNOR OF NEW YORK, ET AL. *v.* TRAVELERS INSURANCE CO. ET AL.; and

No. 93–1415. HOSPITAL ASSOCIATION OF NEW YORK STATE *v.* TRAVELERS INSURANCE CO. ET AL. C. A. 2d Cir. [Certiorari granted, *ante,* p. 920.] Motion of Federation of American Health Systems for leave to file a brief as *amicus curiae* granted.

No. 93–1841. ADARAND CONSTRUCTORS, INC. *v.* PENA, SECRETARY OF TRANSPORTATION, ET AL. C. A. 10th Cir. [Certiorari granted, 512 U. S. 1288.] Motion of Maryland Women Business Entrepreneurs Association et al. for leave to participate in oral argument as *amici curiae* denied.

No. 94–23. CITY OF EDMONDS *v.* OXFORD HOUSE, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 959.] Motion of the Solicitor General for divided argument granted to be divided as follows: 15 minutes for the Solicitor General and 15 minutes for the private respondents.

No. 94–167. GUTIERREZ DE MARTINEZ ET AL. *v.* LAMAGNO ET AL. C. A. 4th Cir. [Certiorari granted, *ante,* p. 998.] Motion

of the Solicitor General for divided argument granted. Motion of respondent Dirk A. Lamagno for divided argument granted to be divided as follows: 20 minutes for *amicus curiae* in support of judgment below and 10 minutes for respondent Lamagno.

No. 94–226. FLORIDA BAR *v.* WENT FOR IT, INC., ET AL. C. A. 11th Cir. [Certiorari granted, 512 U. S. 1289.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 94–367. HEINTZ ET AL. *v.* JENKINS. C. A. 7th Cir. [Certiorari granted, *ante,* p. 959.] Motion of Commercial Law League of America for leave to participate in oral argument as *amicus curiae* denied.

No. 94–7284. IN RE ROEMER;
No. 94–7355. IN RE BOND; and
No. 94–7406. IN RE CARSON ET AL. Petitions for writs of habeas corpus denied.

No. 94–928. IN RE ANDERSON ET AL. Petition for writ of mandamus denied.

Certiorari Denied

No. 94–413. KNOX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 32 F. 3d 733.

No. 94–442. BOSTON POST ROAD LIMITED PARTNERSHIP *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 21 F. 3d 477.

No. 94–451. HOLLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 22 F. 3d 1040.

No. 94–511. FLORIDA ROCK INDUSTRIES, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 18 F. 3d 1560.

No. 94–527. BELLA *v.* CHAMBERLAIN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 24 F. 3d 1251.

No. 94–534. OLIVAS *v.* BOEH. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 761.

No. 94–538. BOERS ET AL. *v.* UNITED STATES DEPARTMENT OF AGRICULTURE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 244.

No. 94–568. McKinney *v.* Osceola County Board of County Commissioners. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1550.

No. 94–648. Aispuro, Warden *v.* Melendez Longoria. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–692. Parker *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 19 F. 3d 638.

No. 94–694. Burke *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1174.

No. 94–701. Nelson et ux. *v.* United States Department of the Interior. C. A. 2d Cir. Certiorari denied. Reported below: 26 F. 3d 349.

No. 94–708. El Dorado Palm Springs, Ltd., dba El Dorado Mobilehome Park *v.* Rent Review Commission of the City of Palm Springs et al.; and

No. 94–963. Residents of El Dorado Mobilehome Park *v.* Rent Review Commission of the City of Palm Springs et al. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–717. Napoli *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 32 F. 3d 31.

No. 94–721. USX Corp. *v.* Cox et al.;

No. 94–724. United Steelworkers of America *v.* Cox et al.; and

No. 94–910. Cox et al. *v.* USX Corp. et al. C. A. 11th Cir. Certiorari denied. Reported below: 17 F. 3d 1386 and 30 F. 3d 1347.

No. 94–748. Yong Hyon Kim *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 27 F. 3d 947.

No. 94–752. American Bankers Assn. et al. *v.* Kelley, Attorney General of Michigan, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 15 F. 3d 1100.

No. 94–768. Cleveland et al. *v.* Beltman North American Co., Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 30 F. 3d 373.

No. 94–814. DOUGHERTY ET AL. *v.* MARKS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1487.

No. 94–844. CUMMINGS ET AL. *v.* DEKALB COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 1349.

No. 94–864. LARSON *v.* NUTT, SHERIFF, MARTIN COUNTY. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 647.

No. 94–867. HYUNDAI MOTOR CO. ET AL. *v.* PHILLIP, PERSONAL REPRESENTATIVE OF THE ESTATE OF PHILLIP, DECEASED. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 639 So. 2d 1064.

No. 94–880. CROSS *v.* CUNNINGHAM, WARDEN. Sup. Ct. N. H. Certiorari denied. Reported below: 138 N. H. 591, 644 A. 2d 542.

No. 94–894. ROBERTS *v.* TOWN OF CANTON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 33 F. 3d 62.

No. 94–895. AMERICAN UNION OF BAPTISTS, INC., ET AL. *v.* TRUSTEES OF THE PARTICULAR PRIMITIVE BAPTIST CHURCH AT BLACK ROCK, INC. Ct. App. Md. Certiorari denied. Reported below: 335 Md. 564, 644 A. 2d 1063.

No. 94–897. WANG, CHAIRMAN, CAMPAIGN SPENDING COMMISSION OF HAWAII, ET AL. *v.* LIND. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1115.

No. 94–902. VAN WINKLE *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 94–906. RICHARDS, CONSERVATOR AND GUARDIAN OF THE ESTATE OF RICHARDS *v.* MICHELIN TIRE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1048.

No. 94–911. DOLNY *v.* ERICKSON, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 32 F. 3d 381.

No. 94–913. BERRY, PERSONAL REPRESENTATIVE OF THE ESTATE OF BERRY, DECEASED *v.* CITY OF DETROIT. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1342.

No. 94–914. ADAMS ET AL. *v.* BARCLAYS AMERICAN BUSINESS CREDIT, INC. C. A. 6th Cir. Certiorari denied. Reported below: 31 F. 3d 389.

No. 94–915. National Union Fire Insurance Company of Pittsburgh et al. *v.* Highlands Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 1027.

No. 94–916. Remmey et al., Executors of the Estate of Remmey, Deceased *v.* PaineWebber, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 143.

No. 94–927. Woods et al. *v.* Federal Land Bank of Omaha. Sup. Ct. Iowa. Certiorari denied. Reported below: 520 N. W. 2d 305.

No. 94–930. Balducci Publications et al. *v.* Anheuser-Busch, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 769.

No. 94–931. Lewellen *v.* Metropolitan Government of Nashville and Davidson County, Tennessee, et al. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 345.

No. 94–934. Lisek *v.* Norfolk & Western Railway Co. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 823.

No. 94–935. Taub *v.* City of Deer Park. Sup. Ct. Tex. Certiorari denied. Reported below: 882 S. W. 2d 824.

No. 94–939. Enterprise VI et al. *v.* Ferguson et al. Ct. App. Ky. Certiorari denied.

No. 94–942. United World Trade, Inc. *v.* Mangyshlakneft Oil Production Assn. et al. C. A. 10th Cir. Certiorari denied. Reported below: 33 F. 3d 1232.

No. 94–948. Kucinski *v.* Morning Call, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 1172.

No. 94–955. DiCuccio *v.* Geisinger Clinic. Super. Ct. Pa. Certiorari denied. Reported below: 414 Pa. Super. 85, 606 A. 2d 509.

No. 94–957. American Disposal Co. et al. *v.* Hume et al. Sup. Ct. Wash. Certiorari denied. Reported below: 124 Wash. 2d 656, 880 P. 2d 988.

No. 94–958. Brummett *v.* Campbell et al. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–973. THOMAS *v.* MONSANTO EMPLOYEES' CREDIT UNION. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1060.

No. 94–974. OHIO SAVINGS BANK, FKA OHIO SAVINGS ASSN. *v.* HAMILTON ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 3d 137, 637 N. E. 2d 887.

No. 94–975. BENSON ET AL. *v.* EMPIRE STATE BANK. Ct. App. Minn. Certiorari denied. Reported below: 516 N. W. 2d 550.

No. 94–985. FORGETTE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 35 F. 3d 574.

No. 94–991. SEARS, ROEBUCK & CO. *v.* FORBUS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1402.

No. 94–997. BECKMAN ET UX. *v.* GREENSPAN, CHAIRMAN, FEDERAL RESERVE BOARD, ET AL. Sup. Ct. Mont. Certiorari denied.

No. 94–1007. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1493.

No. 94–1008. ESPOSITO *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1540.

No. 94–1017. ADAMS ET AL. *v.* MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ET AL. Ct. App. Md. Certiorari denied. Reported below: 336 Md. 105, 647 A. 2d 96.

No. 94–1031. FELIX *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 356.

No. 94–1032. REYNOLDS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 198.

No. 94–1065. MARTINDALE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 348.

No. 94–1067. COLEMAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 46.

No. 94–1068. GREAVES *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 432.

No. 94–1069. MORGAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 405.

No. 94–1071. VERDUGO-URQUIDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 637.

No. 94–1078. SCOLIERI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–1083. KOEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 31 F. 3d 722.

No. 94–1095. ENRIQUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 55.

No. 94–5144. ANDREWS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 612.

No. 94–5352. MOORE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 534 Pa. 527, 633 A. 2d 1119.

No. 94–5634. SMITH *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 25 F. 3d 1363.

No. 94–5837. PITTMAN *v.* AHITOW, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 569.

No. 94–5846. BURKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 876 S. W. 2d 877.

No. 94–6011. NORMAN *v.* TAYLOR. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1259.

No. 94–6093. LUCAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 877 S. W. 2d 315.

No. 94–6136. NICHOLS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 877 S. W. 2d 722.

No. 94–6230. MOORE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 882 S. W. 2d 844.

No. 94–6260. BASHARA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 1174.

No. 94–6263. DEGGENDORF ET AL. *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 94–6369. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 1186.

No. 94–6387. FASOLA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 627.

No. 94–6413. LAPLANTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 28 F. 3d 1.

No. 94–6415. QUEEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 877 S. W. 2d 752.

No. 94–6471. MENZIES *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 889 P. 2d 393.

No. 94–6485. HUERTA-MACIAS, AKA MACIAS-HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–6506. BUDD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 23 F. 3d 442.

No. 94–6507. SPAZIANO *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 1028.

No. 94–6513. OLIVA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1096.

No. 94–6527. JACKSON *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1492.

No. 94–6570. RICH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 94–6574. JEFFERIES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 316 S. C. 13, 446 S. E. 2d 427.

No. 94–6589. BRANTLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–6591. TRONCOSO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 3d 612.

No. 94–6614. PETTY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6778. FORD *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 94–6971. PRICE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 645 So. 2d 454.

No. 94–6980. SCHMIDT *v.* MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 39 F. 3d 1185.

No. 94–6981. TORRES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 225.

No. 94–6982. SCHAFFER *v.* BEVEVINO ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–6984. WILLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 567.

No. 94–6987. HALL ET AL. *v.* LOCAL UNION 1183, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA. Sup. Ct. Del. Certiorari denied. Reported below: 648 A. 2d 424.

No. 94–6990. MAFNAS *v.* ALDAN-PIERCE. C. A. 9th Cir. Certiorari denied. Reported below: 31 F. 3d 756.

No. 94–6991. RAMOS *v.* OFFICE OF THE PUBLIC DEFENDER, HUDSON REGION. C. A. 3d Cir. Certiorari denied.

No. 94–6992. PIZZO *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–6994. REILLY *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–6995. MARVEL *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 651 A. 2d 788.

No. 94–6997. RUTHERS *v.* ORTIZ, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1490.

No. 94–6999. DYER *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–7000. DUSENBERY *v.* GRAVES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 37 F. 3d 1498.

No. 94–7002. CAZEAU, AKA LAFLEUR *v.* PENNSYLVANIA STATE POLICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1486.

No. 94–7003. BRADFORD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 639 So. 2d 1326.

No. 94–7004. BRONFMAN *v.* CITY OF KANSAS CITY, MISSOURI, ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 879 S. W. 2d 587.

No. 94–7006. SIEROTOWICZ *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied.

No. 94–7011. SOWA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 34 F. 3d 447.

No. 94–7015. MEHRER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 253.

No. 94–7017. PARADIS *v.* ARAVE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 20 F. 3d 950.

No. 94–7023. BENCS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 555.

No. 94–7035. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–7037. DAVID *v.* HUDACS, NEW YORK COMMISSIONER OF LABOR. Ct. App. N. Y. Certiorari denied. Reported below: 82 N. Y. 2d 663, 632 N. E. 2d 461.

No. 94–7043. BAEZ *v.* DOUGLAS COUNTY COMMISSION ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–7045. BARROW *v.* BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS AT EL PASO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–7055. MCKENZIE *v.* WEER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 1415.

No. 94–7056. LADSON *v.* METROPOLITAN DADE COUNTY ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 642 So. 2d 1362.

No. 94–7061. TURPIN *v.* KASSULKE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 26 F. 3d 1392.

No. 94–7069. RAWLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7075. BURNS *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 23 F. 3d 406.

No. 94–7076. CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–7085. HARPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 1143.

No. 94–7091. VAUTIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 93.

No. 94–7095. GIDIGLO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 556.

No. 94–7098. COEFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1496.

No. 94–7100. HAWKINS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–7113. BEASLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1106.

No. 94–7116. AUSTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 36 F. 3d 89.

No. 94–7117. KIMBLE *v.* MONTGOMERY COUNTY GOVERNMENT ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 99 Md. App. 751.

No. 94–7118. ALVARADO BARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 559.

No. 94–7123. KOVALIC *v.* DEC INTERNATIONAL. Ct. App. Wis. Certiorari denied. Reported below: 186 Wis. 2d 162, 519 N. W. 2d 351.

No. 94–7129. BRANNON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 1182.

No. 94–7133. HADRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–7138. GRIGGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–7140. OSUORJI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 1186.

No. 94–7141. PIERRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 32 F. 3d 611.

No. 94–7143. MASON *v.* UNITED STATES; and
No. 94–7144. NOYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 134.

No. 94–7145. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 632.

No. 94–7151. SELIGSOHN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1172.

No. 94–7155. STANCIL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 558.

No. 94–7160. WALTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 33 F. 3d 57.

No. 94–7166. PURK *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 36 F. 3d 1117.

No. 94–7167. CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 F. 3d 831.

No. 94–7169. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 F. 3d 1213.

No. 94–7171. BUSTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 F. 3d 1506.

No. 94–7177. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7182. CUPA-GUILLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 860.

No. 94–7183. CASTELLANOS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 803.

No. 94–7186. BASCUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 572.

No. 94–7190. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 94.

No. 94–7192. ERWIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 565.

No. 94–7194. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1175.

No. 94–7195. PENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7196. QUINN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 565.

No. 94–7197. ORIAKHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–7199. REDMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 437.

No. 94–7200. NIXON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 641 So. 2d 751.

No. 94–7288. MOSELEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 336 N. C. 710, 445 S. E. 2d 906.

No. 94–761. CALDERON, WARDEN, ET AL. *v.* WADE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma*

pauperis granted. Certiorari denied. Reported below: 29 F. 3d 1312.

No. 94–801. ARIZONA *v.* BURKETT. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 179 Ariz. 109, 876 P. 2d 1144.

No. 94–932. MICHIGAN *v.* CARUSO. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 446 Mich. 643, 521 N. W. 2d 557.

No. 94–909. PRINCZ *v.* FEDERAL REPUBLIC OF GERMANY. C. A. D. C. Cir. Motions of Individual Professors of International Law and Anti-Defamation League of B'nai B'rith et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 26 F. 3d 1166.

No. 94–946. FOREST GROVE, INC., ET AL. *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER OF HILL FINANCIAL, S. A. C. A. 3d Cir. Motion of respondent to substitute RTC Mortgage Trust 1994–S5 in place of Resolution Trust Corporation, as Receiver for Hill Financial, S. A., granted. Certiorari denied. Reported below: 33 F. 3d 284.

No. 94–951. HALL ET AL. *v.* O'SULLIVAN ET AL. Ct. App. Cal., 2d App. Dist. Motion of California Justice Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 94–966. PRIMATE AND BISHOPS' SYNOD OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA *v.* RUSSIAN ORTHODOX CHURCH OF THE HOLY RESURRECTION, INC., ET AL. Sup. Jud. Ct. Mass. Motion of James Andrews et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 418 Mass. 1001, 636 N. E. 2d 211.

No. 94–986. CLAPP *v.* LEBOEUF, LAMB, LEIBY & MACRAE ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner to defer consideration of petition for certiorari denied. Certiorari denied. Reported below: 188 App. Div. 2d 386, 592 N. Y. S. 2d 580.

Rehearing Denied

No. 93–9758. FERRAN ET AL. *v.* TOWN OF NASSAU, NEW YORK, ET AL., *ante*, p. 1014;

No. 94–22. WASHINGTON *v.* UNITED STATES, *ante*, p. 1014;
No. 94–280. GLEAVE *v.* UNITED STATES, *ante*, p. 1015;
No. 94–343. THANH VONG HOAI *v.* SUN REFINING & MARKETING CO., INC., *ante*, p. 947;
No. 94–362. ACEVEDO-VILLALOBOS ET AL. *v.* HERNANDEZ ET AL., *ante*, p. 1015;
No. 94–440. SETOLA ET AL. *v.* BOB SCHMIDT CHEVROLET, INC., ET AL., *ante*, p. 1016;
No. 94–441. MACKEY *v.* MOSS ET AL., *ante*, p. 1043;
No. 94–665. BROBST *v.* PENNSYLVANIA ET AL., *ante*, p. 1044;
No. 94–5062. YANKELEVICZ *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 1020;
No. 94–5310. JERRY *v.* DOMOVICH, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL., *ante*, p. 895;
No. 94–5380. LESTER *v.* JABE, WARDEN, *ante*, p. 1020;
No. 94–5986. MORRIS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 972;
No. 94–6009. LAVOLD *v.* CHANG ET AL., *ante*, p. 1021;
No. 94–6124. MEADE-STEPHENS *v.* SCHOOL DISTRICT OF THE CITY OF JERSEY CITY, HUDSON COUNTY, *ante*, p. 991;
No. 94–6259. WALLACE *v.* SMITH, WARDEN, ET AL., *ante*, p. 1023;
No. 94–6319. HIRATANI *v.* DEPARTMENT OF THE TREASURY ET AL., *ante*, p. 992;
No. 94–6345. HERRON-COLE *v.* JETER ET AL., *ante*, p. 1025;
No. 94–6351. JOHNSON *v.* EPPS, *ante*, p. 1025;
No. 94–6380. CARTER *v.* AMTRAK, *ante*, p. 1006;
No. 94–6381. SINAI *v.* NEW ENGLAND TELEPHONE & TELEGRAPH CO. ET AL., *ante*, p. 1025;
No. 94–6440. SMATHERS *v.* GREINER, *ante*, p. 1026; and
No. 94–6541. ECHOLS *v.* YUKON TELEPHONE CO., INC., ET AL., *ante*, p. 1048. Petitions for rehearing denied.

JANUARY 18, 1995

Dismissals Under Rule 46

No. 94–7054. MCCALL *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 31 F. 3d 750.

No. 94–815. PUBLIC SCHOOL RETIREMENT SYSTEM OF MISSOURI *v.* LYNCH ET AL. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 27 F. 3d 336.

JANUARY 20, 1995

Certiorari Granted

No. 93–2068. KIMBERLIN *v.* QUINLAN ET AL. C. A. D. C. 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 1, 1995. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 29, 1995. This Court's Rule 29.2 does not apply. Reported below: 6 F. 3d 789.

No. 94–6790. GARLOTTE *v.* FORDICE, GOVERNOR OF MISSISSIPPI. C. A. 5th 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., Wednesday, March 1, 1995. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 29, 1995. This Court's Rule 29.2 does not apply. Reported below: 29 F. 3d 216.

JANUARY 23, 1995

Certiorari Granted—Vacated and Remanded

No. 93–995. HOME BUYERS WARRANTY CORPORATION II ET AL. *v.* LOPEZ. Sup. Ct. Ala. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Allied-Bruce Terminix Cos.* v. *Dobson*, *ante*, p. 265. Reported below: 628 So. 2d 361.

No. 93–1000. TERMINIX INTERNATIONAL COMPANY LIMITED PARTNERSHIP ET AL. *v.* JACKSON ET UX. Sup. Ct. Ala. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Allied-Bruce Terminix Cos.* v. *Dobson*, *ante*, p. 265. Reported below: 628 So. 2d 357.

No. 93–1816. SOUTHERN HEALTH CORPORATION OF HAMILTON, INC., ET AL. *v.* LORANCE. Sup. Ct. Ala. Certiorari granted, judgment vacated, and case remanded for further consideration

in light of *Allied-Bruce Terminix Cos.* v. *Dobson*, *ante*, p. 265. Reported below: 632 So. 2d 475.

Certiorari Granted—Reversed. (See No. 94–941, *ante*, p. 364.)

Miscellaneous Orders

No. ——. LOWRY *v.* RUBIN, JUDGE; and

No. ——. ROGERS *v.* GUERRERO ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–1465. IN RE DISBARMENT OF GOODMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 984.]

No. D–1469. IN RE DISBARMENT OF BONETA. Disbarment entered. [For earlier order herein, see *ante*, p. 1037.]

No. D–1497. IN RE DISBARMENT OF SKINNER. It is ordered that Truman A. Skinner, of Miami, Fla., be suspended from the practice of law in this Court and that a rule 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–1498. IN RE DISBARMENT OF WHITE. It is ordered that David Garth White, of Cedar Key, Fla., be suspended from the practice of law in this Court and that a rule 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. Exceptions to the Report of the Special Master set for oral argument in due course. [For earlier order herein, see, *e. g.*, *ante*, p. 803.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of Basin Electric Power Cooperative for leave to file a reply to certain Exceptions to the Report of the Special Master granted. Motion of Platte River Trust for leave to file a response to Wyoming's Second Exception to the Report of the Special Master granted. Exceptions to the Report of the Special Master set for oral argument in due course. [For earlier order herein, see, *e. g.*, *ante*, p. 997.]

No. 94–431. RYDER *v.* UNITED STATES. C. A. Armed Forces. [Certiorari granted, *ante*, p. 1071.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 94–514. UNITED STATES *v.* GAUDIN. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1071.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 94–623. VIMAR SEGUROS Y REASEGUROS, S. A. *v.* M/V SKY REEFER ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 1013.] Motion of American Association of Exporters and Importers for leave to file a brief as *amicus curiae* granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 94–1024. HUDDLESTON *v.* CIGNA INSURANCE CO., FKA INA UNDERWRITERS INSURANCE CO. ET AL., *ante*, p. 1071. Motion of respondents for double costs and damages granted in part, and respondents are awarded a total of $500 to be paid by counsel for petitioner on or before February 17, 1995.

No. 94–6790. GARLOTTE *v.* FORDICE, GOVERNOR OF MISSISSIPPI. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1123.] Motion of petitioner for appointment of counsel granted, and it is ordered that Brian D. Boyle, Esq., of Washington, D. C., be appointed to serve as counsel for petitioner in this case.

No. 94–7449. IN RE VEY. Petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 94–203. MORSE ET AL. *v.* REPUBLICAN PARTY OF VIRGINIA ET AL. Appeal from D. C. W. D. Va. Probable jurisdiction noted. Reported below: 853 F. Supp. 212.

Certiorari Granted

No. 94–12. SEMINOLE TRIBE OF FLORIDA *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 11 F. 3d 1016.

No. 94–896. BMW OF NORTH AMERICA, INC. *v.* GORE. Sup. Ct. Ala. Certiorari granted. Reported below: 646 So. 2d 619.

No. 94–947. NATIONAL LABOR RELATIONS BOARD *v.* TOWN & COUNTRY ELECTRIC, INC., ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 34 F. 3d 625.

No. 94–6615. THOMPSON *v.* KEOHANE, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 34 F. 3d 1073.

Certiorari Denied

No. 93–1857. CARPENTERS DISTRICT COUNCIL OF NEW ORLEANS AND VICINITY ET AL. *v.* DILLARD DEPARTMENT STORES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 15 F. 3d 1275.

No. 93–7218. SUESS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 1056.

No. 94–596. HUGHES *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 11 F. 3d 1069.

No. 94–612. JACKSON *v.* SCHEIBEL, DIRECTOR, ACTION. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 3d 126.

No. 94–775. ESTATE OF MARCOS *v.* HILAO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 1467.

No. 94–796. DR. JOHN HAGELIN FOR PRESIDENT COMMITTEE OF KANSAS ET AL. *v.* GRAVES, SECRETARY OF STATE OF KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 25 F. 3d 956.

No. 94–798. UNITED STATES LINES REORGANIZATION TRUST, SUCCESSOR TO UNITED STATES LINES (S. A.), INC. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 30 F. 3d 385.

No. 94–811. WALLSHEIN *v.* CABLESTRAND CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 29 F. 3d 644.

No. 94–925. METROPOLITAN WASHINGTON AIRPORTS AUTHORITY ET AL. *v.* HECHINGER ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 36 F. 3d 97.

No. 94–952. PAN AMERICAN WORLD AIRWAYS, INC., ET AL. *v.* PAGNUCCO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 37 F. 3d 804.

No. 94–965. WEISBERG *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 1271.

No. 94–968. PINEVILLE REAL ESTATE OPERATION CORP. ET AL. *v.* MICHAEL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 88.

No. 94–969. ODEKIRK *v.* IMPERIAL PALACE, INC., V. E. B. A. TRUST EMPLOYEE MEDICAL BENEFIT PLAN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1102.

No. 94–970. BUSTER *v.* THOMAS, HEAD & GREISEN EMPLOYEES TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 1114.

No. 94–971. CAMPBELL ET AL. *v.* LEECH LAKE BAND OF CHIPPEWA INDIANS ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 521 N. W. 2d 357.

No. 94–978. JOSLYN MANUFACTURING CO. *v.* LIBERTY MUTUAL INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 630.

No. 94–979. PATTERSON *v.* MATANUSKA MAID, INC., ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 880 P. 2d 1038.

No. 94–983. HOLAHAN, CHAIR OF THE MINNESOTA ETHICAL PRACTICES BOARD, ET AL. *v.* DAY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 1356.

No. 94–994. FOBBS *v.* HOLY CROSS HEALTH SYSTEM CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 1439.

No. 94–996. SCHULZ ET AL. *v.* NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 84 N. Y. 2d 231, 639 N. E. 2d 1140.

No. 94–998. BULLWINKLE *v.* ALASKA. Super. Ct. Alaska, 4th Jud. Dist. Certiorari denied.

No. 94–1001. STEWART *v.* KEOHANE. Sup. Ct. Colo. Certiorari denied. Reported below: 882 P. 2d 1293.

No. 94–1005. HARHAI *v.* CARUSO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1169.

No. 94–1006. KING *v.* YOUNG ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 21 F. 3d 430.

No. 94–1009. LARSSON ET UX. *v.* CITY OF LAKE OSWEGO, OREGON. Ct. App. Ore. Certiorari denied. Reported below: 127 Ore. App. 647, 874 P. 2d 99.

No. 94–1011. SHEIK-ABDI *v.* MCCLELLAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 37 F. 3d 1240.

No. 94–1014. NDEFRU *v.* SHERWOOD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 142.

No. 94–1018. MASS ET AL. *v.* CITY OF CARLSBAD ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–1056. JOHN W. MARTIN CONSTRUCTION CO., INC., ET AL. *v.* NORWEST BANK KALISPELL, N. A. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1113.

No. 94–1091. KELLEY ET AL. *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 35 F. 3d 265.

No. 94–1101. SCHMIDGALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1533.

No. 94–1108. VIVAS *v.* UNITED STATES; and
No. 94–1115. ANDONIAN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: No. 94–1108, 29 F. 3d 634 and 1432; No. 94–1115, 29 F. 3d 634.

No. 94–6226. LONG *v.* RUNYON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 54.

No. 94–6500. INGRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 876.

No. 94–6575. HOLDRIDGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 134.

No. 94–6634. DESANTIAGO-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 F. 3d 394.

No. 94–6673. SEARLES *v.* RELIC ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 620.

No. 94–6683. MARIANI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 1275.

No. 94–6736. FLOWER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 29 F. 3d 530.

No. 94–6831. BECKER *v.* CITY OF KENNEWICK. Sup. Ct. Wash. Certiorari denied.

No. 94–6845. PETERKA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 640 So. 2d 59.

No. 94–6891. WILLIAMS *v.* HAWLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–6897. HAWKINS *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–6898. HAYES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–6899. GUY *v.* NAVARRO, SHERIFF, BROWARD COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 94–6909. SCARPA *v.* DUBOIS, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 38 F. 3d 1.

No. 94–6910. SMART *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 34 F. 3d 432.

No. 94–6912. HARRIS *v.* 7232 PLEASANT VIEW DRIVE. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–6914. FIELDS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 19 Kan. App. 2d xviii, 875 P. 2d 1016.

No. 94–6916. FANNY *v.* LEVY ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–6920. TREDWAY *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 35 F. 3d 288.

No. 94–6921. SMITH *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 94–6922. DEHLER *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 94–6924. LYLES *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 637 N. E. 2d 1385.

No. 94–6925. MOORE *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 882 S. W. 2d 253.

No. 94–6937. AYERS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 335 Md. 602, 645 A. 2d 22.

No. 94–6941. HARDNETT *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 875.

No. 94–6946. KIRK *v.* SIMPSON, SHERIFF. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 566.

No. 94–6948. GILES *v.* IDAHO ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 125 Idaho 921, 877 P. 2d 365.

No. 94–6949. GILMORE *v.* GREGG ET AL. C. A. 10th Cir. Certiorari denied.

No. 94–6951. CHAMBERLIN *v.* HAYES ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–6956. KERSH *v.* LIBERTY STATE BANK & TRUST. C. A. 6th Cir. Certiorari denied. Reported below: 966 F. 3d 1452.

No. 94–6957. KERSH *v.* HUNTINGTON BANKS OF MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 212.

No. 94–6961. DERRICK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 378.

No. 94–6966. REDMOND *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–6967. RAWLINS *v.* OLSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 248.

No. 94–7005. WALLS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 381.

No. 94–7007. TORREY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 94–7013. NICHOLS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–7018. PARKER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 369.

No. 94–7022. BALLARD *v.* BREEDEN. Cir. Ct. City of Norfolk, Va. Certiorari denied.

No. 94–7032. HOLSTON *v.* GRIFFIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1209.

No. 94–7033. HOLLINGSWORTH *v.* BURTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 109.

No. 94–7038. BRADFORD *v.* SAN LUIS OBISPO COUNTY, DEPARTMENT OF SOCIAL SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–7042. SHIVER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 94–7044. WARDLAW *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–7047. GINES *v.* CURRAN ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–7048. FAILE *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–7058. MURRAY *v.* PENOBSCOT COUNTY DISTRICT ATTORNEY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 30 F. 3d 126.

No. 94–7059. RIGNEY *v.* BEYER, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7060. CALIA *v.* PARKER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1395.

No. 94–7066. DEGRIJZE *v.* SCHWARTZ ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–7068. MAGHE *v.* CARR, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1105.

No. 94–7128. ARMSTRONG *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 523 N. W. 2d 443.

No. 94–7146. QUIGLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 F. 3d 135.

No. 94–7149. MARQUARD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 54.

No. 94–7162. ANDERSON *v.* HUMANA, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 34 F. 3d 1076.

No. 94–7206. CHISCHILLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1144.

No. 94–7210. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 F. 3d 573.

No. 94–7213. BONASIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 40 F. 3d 1306.

No. 94–7215. TUESTA TORO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 29 F. 3d 771.

No. 94–7218. WAGONER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 36 F. 3d 90.

No. 94–7219. BEIL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1171.

No. 94–7221. TREUR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 135.

No. 94–7224. RIVERA-SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 212.

No. 94–7225. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 40 F. 3d 850.

No. 94–7227. SCOTT *v.* HALL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 566.

No. 94–7228. ASHBY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 572.

No. 94–7229. ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 41 F. 3d 663.

No. 94–7232. LYONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–7233. PLEDGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 35 F. 3d 574.

No. 94–7234. OSORIO-ARCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 573.

No. 94–7235. OVALLE-SALCEDO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 17 F. 3d 1432.

No. 94–7240. DORSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 27 F. 3d 285.

No. 94–7241. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1172.

No. 94–7242. HARRIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 43 F. 3d 712.

No. 94–7245. HOYLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 415.

No. 94–7247. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1498.

No. 94–7248. TREECE *v.* WATERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1094.

No. 94–7249. BERKERY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1489.

No. 94–7252. BEYAH *v.* SENKOWSKI. C. A. 2d Cir. Certiorari denied.

No. 94–7255. HASSAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1094.

No. 94–7256. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 F. 3d 1051.

No. 94–7257. VALENCIA-VARGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 573.

No. 94–7258. FRANCISCO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 116.

No. 94–7260. MARQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 43 F. 3d 1459.

No. 94–7261. POTTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 94.

No. 94–7262. MATHIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 40 F. 3d 474.

No. 94–7276. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 636.

No. 94–7277. BAILEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 35 F. 3d 574.

No. 94–7278. BENTLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 140.

No. 94–7282. ROSARIO, AKA TORRES-ROSARIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1172.

No. 94–7290. VICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 558.

No. 94–7298. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1104.

No. 94–7299. GOLDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 94–7300. MCCLARIN, AKA NEALY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 642.

No. 94–7303. WILDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 558.

No. 94–7306. FREEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 F. 3d 1508.

No. 94–7307. WOODS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1533.

No. 94–7308. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 636.

No. 94–7310. SKIPPER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 337 N. C. 1, 446 S. E. 2d 252.

No. 94–7314. DANIELS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 337 N. C. 243, 446 S. E. 2d 298.

No. 94–7316. DAVILA-ESCOVEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 840.

No. 94–7317. BRISCOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 F. 3d 271.

No. 94–7319. ARNOLD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 94.

No. 94–7321. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 636.

No. 94–7322. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–7327. KILLION *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 844.

No. 94–7328. KING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 36 F. 3d 728.

No. 94–7331. HATCHETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 94–7334. ROMANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 35 F. 3d 699.

No. 94–7335. MAYBERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 631.

No. 94–7336. WAI CHONG LEUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 1402.

No. 94–7337. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 143.

No. 94–7340. RESTREPO-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 636.

No. 94–7344. MINNIECHESKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 94–7346. BURTON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 100 Md. App. 790.

No. 94–7351. VIJENDIRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 573.

No. 94–7379. MEROLA *v.* BEYER ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–712. FRESSIE *v.* TRANS WORLD AIRLINES ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 31 F. 3d 1171.

No. 94–961. DELAWARE *v.* JACKSON. Sup. Ct. Del. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 643 A. 2d 1360.

No. 94–993. ILLINOIS *v.* TURNER. App. Ct. Ill., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 259 Ill. App. 3d 979, 631 N. E. 2d 1236.

No. 94–7222. WHITNEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 21 F. 3d 420.

No. 94–7750 (A–536). SMITH *v.* NORTH CAROLINA. Sup. Ct. N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 94–389. CLOSTERMANN *v.* JOHNSON ET AL., *ante*, p. 948;

No. 94–487. BRASWELL *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT, *ante*, p. 964;

No. 94–664. JOHNSON, DBA F. C. JOHNSON CONSTRUCTION CO. *v.* HYNEMAN, *ante*, p. 1043;

No. 94–5876. JUDGE *v.* BOLAN, *ante*, p. 969;

No. 94–5878. FAIR *v.* ILLINOIS, *ante*, p. 1020;

No. 94–6110. GOULDING *v.* UNITED STATES, *ante*, p. 1061;

No. 94–6189. BOLENDER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1022;

No. 94–6222. GREEN *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 1004;

No. 94–6276. VALDEZ *v.* JOY TECHNOLOGIES ET AL., *ante*, p. 1023;

No. 94–6486. KELLY *v.* WITHROW, WARDEN, ET AL., *ante*, p. 1061;

No. 94–6536. JONES *v.* UNITED STATES, *ante*, p. 1028;

No. 94–6627. IN RE WILSON, *ante*, p. 1013;

No. 94–6630. BROUGHTON *v.* SMITH ET AL., *ante*, p. 1048;

No. 94–6655. SLAGEL *v.* SHELL OIL REFINERY ET AL., *ante*, p. 1031; and

No. 94–6663. HARRIS *v.* LILLARD ET AL., *ante*, p. 1063. Petitions for rehearing denied.

No. 94–5977. AZUBUKO *v.* COMMISSIONER OF PARKING, CITY OF BOSTON, ET AL., *ante*, p. 983. Motion for leave to file petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this motion.

JANUARY 24, 1995

Certiorari Denied

No. 94–7770 (A–547). EDMONDS *v.* JABE, 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. Reported below: 46 F. 3d 1123.

JANUARY 26, 1995

Miscellaneous Order

No. 94–6615. THOMPSON *v.* KEOHANE, WARDEN, ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1126.] Motion for appointment of counsel granted, and it is ordered that Julie R. O'Sullivan, Esq., of Washington, D. C., be appointed to serve as counsel for petitioner in this case.

JANUARY 30, 1995

Certiorari Denied

No. 94–7851 (A–556). WILLIAMS *v.* SCOTT, 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: 35 F. 3d 159.

No. 94–7857 (A–557). RUSSELL *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, pre-

sented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 2, 1995

Dismissal Under Rule 46

No. 94–7401. KENNON *v.* ROBERTSON ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 37 F. 3d 629.

FEBRUARY 5, 1995

Certiorari Denied

No. 94–7948 (A–574). MOTLEY *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.

FEBRUARY 13, 1995

Miscellaneous Order

No. A–555. O'CONNELL, GUARDIAN AD LITEM FOR BABY BOY RICHARD *v.* KIRCHNER; and

No. A–558. DOE ET AL. *v.* KIRCHNER. Applications for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

JUSTICE O'CONNOR, with whom JUSTICE BREYER joins, dissenting.

Wrenching factual circumstances such as these have arrived on our doorstep twice in as many years. See *DeBoer* v. *DeBoer*, 509 U. S. 1301 (1993). Baby Richard is nearly four years old. He has lived his entire life in the care of the Does, a couple who believed, at least initially, that he was legally their child. Otakar Kirchner, the boy's biological father, was told for the first 57 days of the boy's life that his son was dead. When Kirchner learned that Baby Richard had instead been put up for adoption by his biological mother, Kirchner immediately asserted his rights and sought the boy's return. Last year, after finding Kirchner a fit parent and determining that he had adequately pursued his interest in the child, the Illinois Supreme Court invalidated the adoption, see *In re Petition of Doe*, 159 Ill. 2d 347, 638 N. E. 2d 181 (1994). We denied the petition for certiorari seeking review of

that judgment, see *ante*, p. 994. To date, Otakar Kirchner has never met his son.

One week ago, four hours after concluding oral argument on Kirchner's habeas petition, the Illinois Supreme Court issued a one-line order directing the Does "to surrender forthwith custody of the child known as Baby Boy Richard" to Otakar Kirchner. In so doing, the court evidently did not apply a recent amendment to the state adoption laws, 750 Ill. Comp. Stat. § 50/20b (1994), which provides,

> "In the event that an order for adoption is vacated, the court shall promptly conduct a hearing as to the temporary and permanent custody of the minor child who is the subject of the proceeding pursuant to Part VI of the Illinois Marriage and Dissolution of Marriage Act. The parties to the proceeding shall be the petitioners to the adoption proceeding, the minor child, the biological parents whose rights have been terminated, and other parties who have been granted leave to intervene in the proceeding. The provisions of this Section shall apply to all cases pending on and after the effective date of this amendatory Act of 1994."

The amendment employs mandatory language. Cf. *Hewitt* v. *Helms*, 459 U. S. 460, 472 (1983). It also appears on its face to apply to the instant case.

At this juncture, we can only speculate about the Illinois Supreme Court's rationale for avoiding application of a state law that appears to mandate a "best interests" hearing. The court may have rested its decision on state law grounds, either finding the provision altogether inapplicable in this habeas proceeding or determining that it violated the State Constitution. On the other hand, the court may have rested its decision on a conclusion that 750 Ill. Comp. Stat. § 50/20b runs afoul of the Federal Constitution. Cf. 159 Ill. 2d, at 363, 638 N. E. 2d, at 188 (Heiple, J., writing in support of denial of rehearing) (citing *Stanley* v. *Illinois*, 405 U. S. 645 (1972), a case based on the Federal Constitution, to support the proposition that the "best interests" standard should not be the determining factor in custody cases); *id.*, at 190 (suggesting that the enactment of a provision designed to affect pending cases violates state principles of separation of powers).

That we are left guessing about the basis for the Illinois Supreme Court's decision, particularly when opinions are forthcom-

ing, gives me considerable pause. A decision that the Federal Constitution invalidates the Illinois statute may raise a conflict with decisions of other courts. See, *e. g.*, *In re Baby Boy C.*, 630 A. 2d 670 (D. C. 1993), cert. denied *sub nom. H. R.* v. *E. O.*, *ante*, p. 809. Because we are presently ill equipped to evaluate the issues in this difficult case, I would grant a stay extending until 10 days after issuance of the Illinois Supreme Court's opinion or 45 days from today, whichever comes first. As in *Sklaroff* v. *Skeadas*, 76 S. Ct. 736, 738, 100 L. Ed. 1524, 1525 (1956) (Frankfurter, J., in chambers), I believe that in this case, "[d]isrupting the *statu[s] quo* forthwith . . . has consequences whose disadvantages, from the point of view of the child's interests, outweigh any loss to the [biological father] that may result from a short delay in acquiring custody of the child." I respectfully dissent.

February 14, 1995

Dismissal Under Rule 46

No. 94–1119. 20th Century Insurance Co. et al. *v.* Quackenbush, California Insurance Commissioner, et al. Sup. Ct. Cal. Certiorari dismissed as to 20th Century Insurance Co. and 21st Century Casualty Co. under this Court's Rule 46. Reported below: 8 Cal. 4th 216, 878 P. 2d 566.

February 15, 1995

Dismissal Under Rule 46

No. 94–891. DLG Financial Corp. et al. *v.* Board of Governors of the Federal Reserve System et al. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 29 F. 3d 993.

February 16, 1995

Rehearing Denied

No. 94–7100 (A–602). Hawkins *v.* Texas, *ante*, p. 1118. 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.

February 17, 1995

Miscellaneous Order

No. A–597. Board of Trustees of the Galveston Wharves *v.* Pires et al. Sup. Ct. N. Y., County of New York. Application for injunction, presented to Justice Ginsburg, and by her referred to the Court, denied.

February 20, 1995

Miscellaneous Order

No. A–617. Hawkins *v.* Texas. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied.

February 21, 1995

Certiorari Granted—Vacated and Remanded

No. 93–1728. O'Driscoll *v.* Hercules, Inc., et al. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKennon* v. *Nashville Banner Publishing Co.*, *ante*, p. 352. Reported below: 12 F. 3d 176.

No. 94–1097. Harris *v.* Hirsh. Ct. App. N. Y. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hawaiian Airlines, Inc.* v. *Norris*, 512 U. S. 246 (1994). Reported below: 83 N. Y. 2d 734, 636 N. E. 2d 1375.

No. 94–6155. Whitmore *v.* Avery, Superintendent, Community Corrections Center. 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 *Schlup* v. *Delo*, *ante*, p. 298. Reported below: 26 F. 3d 1426.

No. 94–7373. Nave *v.* Delo, Superintendent, Potosi Correctional Center. 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 *Schlup* v. *Delo*, *ante*, p. 298. Reported below: 22 F. 3d 802.

Miscellaneous Orders

No. ——. CORDERO *v.* UNITED STATES; and
No. ——. DUQUE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A–502. MANCE *v.* ARIZONA ET AL. C. A. 9th Cir. Application for stay of mandate, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A–534 (94–1244). BEHRENS *v.* PELLETIER. C. A. 9th Cir. Application for stay of District Court proceedings, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted, and it is ordered that proceedings in this case in the United States District Court for the Central District of California are stayed pending this Court's action on the petition for writ of certiorari. If the petition for writ of certiorari is denied, this order terminates automatically. In the event the petition for writ of certiorari is granted, this order is to remain in effect pending the sending down of the judgment of this Court.

No. D–1455. IN RE DISBARMENT OF WONG. Allan Yon Kwong Wong, of Somerville, Mass., 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 practice before the Bar of this Court. The rule to show cause, heretofore issued on September 14, 1994 [512 U. S. 1282], is hereby discharged.

No. D–1478. IN RE DISBARMENT OF CHASTAIN. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1480. IN RE DISBARMENT OF MACK. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–1481. IN RE DISBARMENT OF LIEBER. Paul Gerald Lieber, of New York, 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 practice before the Bar of this Court. The rule to show cause, heretofore issued on December 5, 1994 [*ante*, p. 1039], is hereby discharged.

No. D–1499. IN RE DISBARMENT OF BENSON. It is ordered that Seth Benson, of New York, N. Y., be suspended from the practice of law in this Court and that a rule 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–1500. IN RE DISBARMENT OF SACKS. It is ordered that Bernard Sacks, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule 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–1501. IN RE DISBARMENT OF TINARI. It is ordered that Nino V. Tinari, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule 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–1502. IN RE DISBARMENT OF STEUTERMANN. It is ordered that Edward M. Steutermann, of Prospect, Ky., be suspended from the practice of law in this Court and that a rule 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–1503. IN RE DISBARMENT OF SYDNOR. It is ordered that Richard W. W. Sydnor, Jr., of Huntington, W. Va., be suspended from the practice of law in this Court and that a rule 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–1504. IN RE DISBARMENT OF HANSON. It is ordered that Lyle Marion Hanson, of Kansas City, Mo., be suspended from the practice of law in this Court and that a rule 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–1506. IN RE DISBARMENT OF WESTLER. It is ordered that Murray Westler, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule 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–1507. IN RE DISBARMENT OF BAIN. It is ordered that David Lee Bain, of San Diego, Cal., be suspended from the practice of law in this Court and that a rule 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–1508. IN RE DISBARMENT OF SAMARCO. It is ordered that James Phillip Samarco, of Fresno, Cal., be suspended from the practice of law in this Court and that a rule 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–1509. IN RE DISBARMENT OF MASON. It is ordered that Cecil Vernon Mason, of New York, N. Y., be suspended from the practice of law in this Court and that a rule 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 Kansas for divided argument granted, and the time is allotted as follows: Kansas, 30 minutes; Colorado, 20 minutes; and the United States, 10 minutes. Motion of Colorado for divided argument denied. Motion of the Solicitor General for divided argument denied. [For earlier order herein, see, *e. g., ante,* p. 1124.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of Wyoming for leave to file a reply brief granted. Motion of the Solicitor General for divided argument granted. [For earlier order herein, see, *e. g., ante,* p. 1124.]

No. 111, Orig. TEXAS ET AL. *v.* NEW YORK. Motion of plaintiff-intervenor States of Alabama et al. for leave to dismiss their respective amended complaints without prejudice denied. Bill of complaint dismissed. [For earlier order herein, see, *e. g., ante,* p. 804.]

No. 93–2068. KIMBERLIN *v.* QUINLAN ET AL. C. A. D. C. Cir. [Certiorari granted, *ante,* p. 1123.] Motion of the parties to dispense with printing the joint appendix granted.

No. 94–440. SETOLA ET AL. *v.* BOB SCHMIDT CHEVROLET, INC., ET AL., *ante,* p. 1016. Motion of respondents for award of damages and costs denied.

No. 94–455. JOHNSON ET AL. *v.* JONES. C. A. 7th Cir. [Certiorari granted, *ante,* p. 1071.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 94–771. OKLAHOMA TAX COMMISSION *v.* CHICKASAW NATION. C. A. 10th Cir. [Certiorari granted, *ante,* p. 1071.] Mo-

tion of petitioner to dispense with printing the joint appendix granted.

No. 94–590. VERNONIA SCHOOL DISTRICT 47J *v.* ACTON ET UX., GUARDIANS AD LITEM FOR ACTON. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1013.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–5707. WILSON *v.* ARKANSAS. Sup. Ct. Ark. [Certiorari granted, *ante,* p. 1014.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–749. HURLEY ET AL. *v.* IRISH-AMERICAN GAY, LESBIAN & BISEXUAL GROUP OF BOSTON ET AL. Sup. Jud. Ct. Mass. [Certiorari granted, *ante,* p. 1071.] Respondents' suggestion of mootness rejected.

No. 94–6620. GAYDOS *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1075] denied.

No. 94–7354. FERTEL-RUST *v.* DANE COUNTY SOCIAL SERVICES ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until March 14, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 94–7377. LONGNECKER *v.* KELLEY. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 14, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 94–7526. IN RE WALKER; and
No. 94–7568. IN RE FLAKES. Petitions for writs of habeas corpus denied.

No. 94–728. IN RE SMITH;
No. 94–1100. IN RE ROGERS;
No. 94–7125. IN RE GREEN;
No. 94–7201. IN RE NASH;

No. 94–7581. IN RE GAY; and

No. 94–7652. IN RE TABAS. Petitions for writs of mandamus denied.

No. 94–1257. IN RE CONSTANT. Petition for writ of mandamus and/or prohibition denied.

No. 94–7086. IN RE GIBSON. Petition for writ of prohibition denied.

Certiorari Granted

No. 94–1039. ROMER, GOVERNOR OF COLORADO, ET AL. *v.* EVANS ET AL. Sup. Ct. Colo. Motions of Family Defense Council and Colorado for Family Values for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 882 P. 2d 1335.

Certiorari Denied

No. 93–9690. FAIRCHILD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 21 F. 3d 799.

No. 94–2. MITSUBISHI INTERNATIONAL CORP. *v.* CARDINAL TEXTILE SALES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 14 F. 3d 1507.

No. 94–625. D & G MARINE MAINTENANCE ET AL. *v.* KOLLIAS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 67.

No. 94–636. ALVAREZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 20 F. 3d 1173.

No. 94–637. CRUZ *v.* PERRY, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 570.

No. 94–671. LOPEZ-AMARO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 986.

No. 94–691. GREGORY *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 27 F. 3d 564.

No. 94–785. DEEB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 13 F. 3d 1532.

No. 94–807. PIROGLU *v.* COLEMAN, FIRE CHIEF, DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 25 F. 3d 1098.

No. 94–829. LANGGUTH *v.* MCCUEN, SECRETARY OF THE STATE OF ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 138.

No. 94–841. ARKANSAS WILDLIFE FEDERATION *v.* ICI AMERICAS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 376.

No. 94–842. MAGILL *v.* EVANS, GEORGE & BRONSTEIN. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 52.

No. 94–879. LEGGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–885. BROWN ET AL. *v.* RESOLUTION TRUST CORPORATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 128.

No. 94–888. NATIONSBANK OF TEXAS, N. A. *v.* EXECUTIVE LIFE INSURANCE CO. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 24 Cal. App. 4th 1156, 29 Cal. Rptr. 2d 734.

No. 94–903. ATKINS *v.* COLTEC INDUSTRIES, INC., FKA COLT INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–904. HEILWEIL *v.* MOUNT SINAI HOSPITAL. C. A. 2d Cir. Certiorari denied. Reported below: 32 F. 3d 718.

No. 94–905. NAKATA ET AL. *v.* HAWAII ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 76 Haw. 360, 878 P. 2d 699.

No. 94–908. J. R. SIMPLOT CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 58.

No. 94–917. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., ET AL. *v.* CITY OF COLUMBIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 52.

No. 94–919. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* HEALTH INSURANCE ASSOCIATION OF

AMERICA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 23 F. 3d 412.

No. 94–926. UNITED FOOD & COMMERCIAL WORKERS LOCAL 951, AFL–CIO & CLC *v.* MULDER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 31 F. 3d 365.

No. 94–938. KREINES *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 1105.

No. 94–943. RODRIGUEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 94–949. GREENBLATT *v.* SMITH BARNEY SHEARSON, INC. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1102.

No. 94–953. SIMPSON *v.* OFFICE OF THRIFT SUPERVISION. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 1418.

No. 94–956. MUNICIPAL UTILITIES BOARD OF ALBERTVILLE, ALABAMA, ET AL. *v.* ALABAMA POWER CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 384.

No. 94–959. PUERTO RICO AQUEDUCT AND SEWER AUTHORITY *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. 1st Cir. Certiorari denied. Reported below: 35 F. 3d 600.

No. 94–980. CITY OF LOS ANGELES *v.* CHEW. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 1432.

No. 94–984. HOPKINS ET AL. *v.* ANDAYA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 632.

No. 94–992. DOU-HAN, INC. *v.* CITY OF ST. PETERSBURG ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 641 So. 2d 872.

No. 94–995. WORCESTER COUNTY, MARYLAND, ET AL. *v.* CANE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 921.

No. 94–1000. VIRGINIA GASOLINE MARKETERS & AUTOMOTIVE REPAIR ASSN., INC. *v.* MOBIL OIL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 220.

No. 94–1013. OJAVAN INVESTORS, INC., ET AL. *v.* CALIFORNIA COASTAL COMMISSION. Ct. App. Cal., 2d App. Dist. Certiorari

denied. Reported below: 26 Cal. App. 4th 516, 32 Cal. Rptr. 2d 103.

No. 94–1015. GELLERT *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 94–1019. HERNANDEZ TORRES ET AL. *v.* NEGRON GAZTAMBIDE. C. A. 1st Cir. Certiorari denied. Reported below: 35 F. 3d 25.

No. 94–1020. MCLAUGHLIN *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 30 F. 3d 861.

No. 94–1022. MCDERMOTT INTERNATIONAL, INC. *v.* BEASLEY ET AL. Sup. Ct. La. Certiorari denied. Reported below: 640 So. 2d 1326.

No. 94–1023. WOODCOCK *v.* JOURNAL PUBLISHING CO., INC., ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 230 Conn. 525, 646 A. 2d 92.

No. 94–1025. UNANUE-CASAL, AKA UNANUE *v.* GOYA FOODS, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 32 F. 3d 561.

No. 94–1027. ANDERSON ET AL. *v.* DOUGLAS & LOMASON CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 1277.

No. 94–1034. LUCAS *v.* HAHN ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 162 Vt. 456, 648 A. 2d 839.

No. 94–1035. PATERSON MUNICIPAL UTILITIES AUTHORITY *v.* HACKENSACK WATER CO. ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–1036. JACKSON *v.* SUPREME COURT OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 30 F. 3d 1486.

No. 94–1037. HABERERN *v.* KAUPP VASCULAR SURGEONS LTD. DEFINED BENEFIT PENSION PLAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 24 F. 3d 1491.

No. 94–1038. FLEMING *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–1040. CITY OF DEARBORN *v.* LOSCHIAVO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 548.

No. 94–1042. WRIGHT *v.* TACKETT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 39 F. 3d 155.

No. 94–1043. KAHAN *v.* SEROR. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 79.

No. 94–1044. BERRY ET AL. *v.* COUNTY OF SONOMA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1174.

No. 94–1046. EAST *v.* WEST ONE BANK, IDAHO. Ct. App. Idaho. Certiorari denied.

No. 94–1047. MORGENSTERN *v.* WILSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 1291.

No. 94–1049. HOUDEK ET AL. *v.* MOBIL OIL CORP. Ct. App. Colo. Certiorari denied. Reported below: 879 P. 2d 417.

No. 94–1050. HICKEY *v.* ATTORNEY GENERAL OF ILLINOIS, AS INTERVENOR ON BEHALF OF THE ILLINOIS DEPARTMENT OF PUBLIC AID. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 263 Ill. App. 3d 658, 635 N. E. 2d 853.

No. 94–1051. PAPETTI'S HYGRADE EGG PRODUCTS, INC. *v.* MICHAEL FOODS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 31 F. 3d 1177.

No. 94–1052. GERIJO, INC. *v.* CITY OF FAIRFIELD. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 3d 223, 638 N. E. 2d 533.

No. 94–1054. TRANSAERO, INC. *v.* LA FUERZA AEREA BOLIVIANA. C. A. D. C. Cir. Certiorari denied. Reported below: 30 F. 3d 148.

No. 94–1058. CARTER *v.* BURCH. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 257.

No. 94–1061. JENSEN *v.* BROKAW, CHIEF FINANCING DIVISION AGENT, SMALL BUSINESS ADMINISTRATION. C. A. 8th Cir. Certiorari denied. Reported below: 36 F. 3d 1100.

No. 94–1062. McCULLOUGH *v.* BRANCH BANKING & TRUST CO., INC. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 127.

No. 94–1063. KLUMP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 21 F. 3d 1117.

No. 94–1064. MA *v.* TRW, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 25 Cal. App. 4th 1834, 31 Cal. Rptr. 2d 460.

No. 94–1066. FERRELLGAS, INC., ET AL. *v.* CLAY ET AL. Sup. Ct. N. M. Certiorari denied. Reported below: 118 N. M. 266, 881 P. 2d 11.

No. 94–1072. KLAUSER ET AL. *v.* BURKES. Sup. Ct. Wis. Certiorari denied. Reported below: 185 Wis. 2d 309, 517 N. W. 2d 503.

No. 94–1073. TRANSCO PRODUCTS, INC. *v.* PERFORMANCE CONTRACTING, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 38 F. 3d 551.

No. 94–1080. KIRSCHNER, DIRECTOR, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM, ET AL. *v.* SALGADO ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 179 Ariz. 301, 878 P. 2d 659.

No. 94–1081. WILKES *v.* YOUNG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1362.

No. 94–1082. GOLDEN *v.* EL CAMINO RESOURCES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 561.

No. 94–1084. TOLIVER *v.* SULLIVAN DIAGNOSTIC TREATMENT CENTER. C. A. 2d Cir. Certiorari denied. Reported below: 22 F. 3d 1092.

No. 94–1085. LESNICK, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LESNICK *v.* HOLLINGSWORTH & VOSE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 939.

No. 94–1086. BRITT *v.* SMITH ET AL. Ct. App. Mich. Certiorari denied.

No. 94–1087. Ross, aka Zakiya *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 34 F. 3d 1067.

No. 94–1088. Forrester et al. *v.* City of San Diego et al. C. A. 9th Cir. Certiorari denied. Reported below: 25 F. 3d 804.

No. 94–1089. City of Hamilton, Ohio, et al. *v.* Amalgamated Transit Union, Local No. 738. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 3d 210, 638 N. E. 2d 522.

No. 94–1092. Shong-Ching Tong et al. *v.* Stanton. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–1094. Reich, Secretary of Labor *v.* Continental Casualty Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 33 F. 3d 754.

No. 94–1098. Scholesser *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 453.

No. 94–1103. Bolton *v.* Scrivner, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 939.

No. 94–1106. Kearns *v.* General Motors Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 31 F. 3d 1178.

No. 94–1107. Salem Blue Collar Workers Assn. et al. *v.* City of Salem et al. C. A. 3d Cir. Certiorari denied. Reported below: 33 F. 3d 265.

No. 94–1110. Quillian *v.* Evatt, Commissioner, South Carolina Department of Corrections, et al. Ct. App. S. C. Certiorari denied. Reported below: 315 S. C. 489, 445 S. E. 2d 639.

No. 94–1111. Manges et al. *v.* Seattle-First National Bank et al. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 1034.

No. 94–1113. Hodges *v.* Huntsman. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 562.

No. 94–1116. U. S. A. Direct, Inc., et al. *v.* North American Communications, Inc. Ct. Common Pleas of Pa., York County. Certiorari denied.

No. 94–1117. LOPEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 354.

No. 94–1118. KNOX *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 28.

No. 94–1119. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. *v.* QUACKENBUSH, CALIFORNIA INSURANCE COMMISSIONER, ET AL.; and

No. 94–1120. CENTURY-NATIONAL INSURANCE CO. ET AL. *v.* QUACKENBUSH, CALIFORNIA INSURANCE COMMISSIONER, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 4th 216, 878 P. 2d 566.

No. 94–1123. BELL ET AL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 537 Pa. 558, 645 A. 2d 211.

No. 94–1125. MCGEE *v.* HOLMES COUNTY, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 631.

No. 94–1126. ONE TIMES SQUARE ASSOCIATES LIMITED PARTNERSHIP *v.* BANQUE NATIONALE DE PARIS. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1502.

No. 94–1129. BRAU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–1130. TEAGUE ET AL. *v.* BAKKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 978.

No. 94–1132. CIAFFONI *v.* COWDEN. Super. Ct. Pa. Certiorari denied.

No. 94–1133. DUPUIS *v.* DON SNELL BUICK, INC. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 632.

No. 94–1135. SOCHIA ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 23 F. 3d 941.

No. 94–1136. TONN *v.* FORSBERG ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 1356.

No. 94–1138. TAYLOR *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 168.

No. 94–1141. BP PERFORMANCE POLYMERS, INC. *v.* ETHYL CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 33 F. 3d 23.

No. 94–1142. GALANIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 49.

No. 94–1144. FOOTE *v.* HATHAWAY. C. A. 2d Cir. Certiorari denied. Reported below: 37 F. 3d 63.

No. 94–1145. MILTON *v.* HULLAR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 633.

No. 94–1149. SHELLEY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 94–1150. KEENER *v.* EXXON CO., USA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 127.

No. 94–1152. SINGH *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–1153. LUCILLE *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 31 F. 3d 546.

No. 94–1155. HIATT *v.* INDIANA STATE STUDENT ASSISTANCE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 36 F. 3d 21.

No. 94–1156. WARD *v.* CITIBANK, N. A., ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 200 App. Div. 2d 405, 608 N. Y. S. 2d 800.

No. 94–1157. CRAWFORD ET AL. *v.* PEE DEE FEDERAL SAVINGS BANK. Ct. App. S. C. Certiorari denied.

No. 94–1158. BROOKS ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 141.

No. 94–1159. CURTIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 37 F. 3d 301.

No. 94–1160. ROBERTSON *v.* BELL HELICOPTER TEXTRON, INC. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 948.

No. 94–1162. MARSHALL *v.* COUNTY OF SAN BERNARDINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 59.

No. 94–1163. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1533.

No. 94–1165. BURZYNSKI *v.* TRUSTEES OF THE NORTHWEST LAUNDRY AND DRY CLEANERS HEALTH & WELFARE TRUST. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 153.

No. 94–1168. VANCE *v.* SOUTHERN BELL TELEPHONE & TELEGRAPH CO. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 1573.

No. 94–1169. LUNDE *v.* HELMS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 367.

No. 94–1171. RESHARD *v.* PENA, SECRETARY OF TRANSPORTATION (two cases). C. A. D. C. Cir. Certiorari denied.

No. 94–1174. GRIFFITH *v.* COLLIER COUNTY, FLORIDA, ET AL.; and

No. 94–1177. BISHOP ET AL. *v.* COLLIER COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 635 So. 2d 145.

No. 94–1176. PORTER COUNTY PLAN COMMISSION ET AL. *v.* MARSHALL. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 1215.

No. 94–1179. BOWLES *v.* ASKEW, DIRECTOR OF ADMISSIONS, OFFICE OF BAR ADMISSIONS, ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 520, 448 S. E. 2d 191.

No. 94–1186. BLUE STREAK, INC., ET AL. *v.* GULF ISLAND IV, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 24 F. 3d 743.

No. 94–1195. HALL ET AL. *v.* CREATIVE GAMES TECHNOLOGY, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 27 F. 3d 572.

No. 94–1196. WRIGHT *v.* BOULDER VALLEY SCHOOL DISTRICT RE–2. Sup. Ct. Colo. Certiorari denied. Reported below: 885 P. 2d 215.

No. 94–1205. COUNTY OF SAN DIEGO ET AL. *v.* SCHNEIDER. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 89.

No. 94–1211. SKEENS *v.* MISSOURI. Ct. Sp. App. Md. Certiorari denied. Reported below: 100 Md. App. 807.

No. 94–1215. TRUNG VAN TRAN *v.* OREGON DEPARTMENT OF REVENUE. Sup. Ct. Ore. Certiorari denied. Reported below: 320 Ore. 170, 880 P. 2d 924.

No. 94–1218. STOMBAUGH *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 208.

No. 94–1224. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 1539.

No. 94–1225. FITZGERALD, STATUTORY TRUSTEE LIQUIDATOR OF PHOENIX SYSTEMS INTERNATIONAL, INC. *v.* BAYHAM ET AL. Ct. App. Ariz. Certiorari denied.

No. 94–1231. CATERINA *v.* BLAKELY BOROUGH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1486.

No. 94–1241. EL HANI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 37 F. 3d 1280.

No. 94–1259. LIEGAKOS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 94–1260. WEBB *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1096.

No. 94–5455. MADDEN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 3d 304.

No. 94–5880. ALBANESE *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 19 F. 3d 21.

No. 94–5917. DUHAMEL *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1109.

No. 94–6020. NOBLES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6273. CLARK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 881 S. W. 2d 682.

No. 94–6274. GARCIA BRISENO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–6294. WEEDEN *v.* RUNYON, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1223.

No. 94–6328. CHILDRESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 F. 3d 498.

No. 94–6361. PRAJEDES ARELLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–6382. WELLONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 117.

No. 94–6386. SOLOMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 29 F. 3d 961.

No. 94–6481. BUTLER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 872 S. W. 2d 227.

No. 94–6492. HARVEY *v.* MYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 106.

No. 94–6510. MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 30 F. 3d 127.

No. 94–6610. BAILEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 159 Ill. 2d 498, 639 A. 2d 1278.

No. 94–6643. HATHAWAY ET AL. *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 976.

No. 94–6694. CRANE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94–6701. IBARRA *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 116 N. M. 486, 864 P. 2d 302.

No. 94–6716. REED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 26 F. 3d 523.

No. 94–6724. DEAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 32 F. 3d 571.

No. 94–6726. CESAR A. *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–6728. GELIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 F. 3d 1041.

No. 94–6732. BELIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 557.

No. 94–6739. WISSINGER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 726, 643 A. 2d 710.

No. 94–6745. UDALA *v.* OFFICE OF ADMINISTRATIVE HEARING OFFICER. C. A. 2d Cir. Certiorari denied.

No. 94–6762. DENINNO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 29 F. 3d 572.

No. 94–6776. TURNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 981.

No. 94–6789. HANNON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 638 So. 2d 39.

No. 94–6828. PARKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 34 F. 3d 1068.

No. 94–6833. PACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1382.

No. 94–6839. SWEETON ET AL. *v.* MCGINNIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 1162.

No. 94–6853. CAMPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 102.

No. 94–6866. JUDD *v.* HANSEN, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO. C. A. 10th Cir. Certiorari denied.

No. 94–6876. PIPER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 35 F. 3d 611.

No. 94–6931. SANCHEZ *v.* UNITED STATES; and
No. 94–7028. CHAVIANO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 32 F. 3d 1330.

No. 94–6939. THURMAN *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 59.

No. 94–6947. HUNT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 36 F. 3d 127.

No. 94–6958. HOWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1232.

No. 94–6968. RONCALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 F. 3d 639.

No. 94–6983. SPRIGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–7029. GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 F. 3d 670.

No. 94–7030. FENNIE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 648 So. 2d 95.

No. 94–7031. GREEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 391.

No. 94–7039. BACON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 337 N. C. 66, 446 S. E. 2d 542.

No. 94–7062. KLEINSCHMIDT *v.* WEHBY. Sup. Ct. Fla. Certiorari denied. Reported below: 642 So. 2d 746.

No. 94–7070. GARCIA PIADARES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–7074. WILEY *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 252.

No. 94–7078. MAINS *v.* LIRA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–7079. BROOKS *v.* O'LEARY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 33 F. 3d 56.

No. 94–7087. BLEICKEN *v.* COOS COUNTY SUPERIOR COURT. C. A. 1st Cir. Certiorari denied.

No. 94–7088. BERNIARD *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 625 So. 2d 217.

No. 94–7089. MCNAIR *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 653 So. 2d 353.

No. 94–7090. COOPER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 674.

No. 94–7094. SASSI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 33 F. 3d 56.

No. 94–7096. CARDONA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 361.

No. 94–7102. GOMEZ *v.* AHITOW, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 29 F. 3d 1128.

No. 94–7104. MACKLIN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 24 F. 3d 1307.

No. 94–7107. SCAIFE *v.* HANNIGAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 37 F. 3d 1510.

No. 94–7108. WILSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 94–7110. ALSTON *v.* REDMAN, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 34 F. 3d 1237.

No. 94–7112. BURKS *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 1424.

No. 94–7114. BELL *v.* KLINCAR. C. A. 7th Cir. Certiorari denied. Reported below: 35 F. 3d 568.

No. 94–7115. BROWN *v.* CITY OF LOUISVILLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 54.

No. 94–7124. EUELL *v.* ROSEMEYER, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL FACILITY AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7130. GALLAGHER *v.* MCNUTT ET AL. Sup. Ct. N. H. Certiorari denied.

No. 94–7131. GASPER *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7132. GOODEN *v.* BRERETON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1092.

No. 94–7134. GRIFFIN *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–7135. KLOPP *v.* AVCO LYCOMING TEXTRON ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–7137. HURT *v.* ROE, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 94–7139. HINES *v.* SETON HALL UNIVERSITY ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7148. LAWRENCE *v.* ARMONTROUT, ASSISTANT DIRECTOR, MISSOURI DIVISION OF ADULT INSTITUTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 31 F. 3d 662.

No. 94–7150. PASCHAL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 94–7152. WARREN *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 94–7153. CONWAY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 25 Cal. App. 4th 385, 30 Cal. Rptr. 2d 533.

No. 94–7154. SMITH *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 94–7156. FULLER *v.* SCHAEFER, GOVERNOR OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1091.

No. 94–7157. DEVIER *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 1445.

No. 94–7159. WILLIAMS *v.* GODINEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 252.

No. 94–7161. WESLEY *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 94–7163. BECK *v.* WHEELER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 24 F. 3d 244.

No. 94–7165. CARTER *v.* ENDELL, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–7168. ENGLE *v.* DEVOE. C. A. 6th Cir. Certiorari denied.

No. 94–7170. WHARTON-EL *v.* HUNDLEY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 38 F. 3d 372.

No. 94–7172. SANDERS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 317 Ark. 328, 878 S. W. 2d 391.

No. 94–7173. PEPPERS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 94–7174. SHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 93.

No. 94–7175. CLIFTON *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 58.

No. 94–7176. ALPHONSO *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–7178. HARRIS *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 94–7180. TOWNE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 94–7181. SCHREYER *v.* TATTERSALL, INC. C. A. 3d Cir. Certiorari denied.

No. 94–7185. SMITH *v.* OKLAHOMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 F. 3d 142.

No. 94–7187. CLISBY *v.* ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1054.

No. 94–7188. KENDALL *v.* KENDALL. Ct. App. Wash. Certiorari denied. Reported below: 73 Wash. App. 1013.

No. 94–7189. SMITH *v.* DAHM, SUPERINTENDENT, OMAHA CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 138.

No. 94–7202. LANGFORD *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 267 Mont. 95, 882 P. 2d 490.

No. 94–7203. LONG *v.* ADMINISTRATIVE DIRECTOR OF NEW JERSEY COURTS ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7204. LIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 94–7207. GODAIRE *v.* ULRICH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 633.

No. 94–7208. SAUNDERS *v.* MAGNUSSON, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 94–7211. YOCAS *v.* COWIN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 29 F. 3d 619.

No. 94–7212. CUPIT *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 532.

No. 94–7214. WILSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–7216. PERAZA SALGADO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–7217. WRIGHT *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 94–7220. BROWN *v.* SIEGEL, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 1030.

No. 94–7223. SMITH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 641 So. 2d 1319.

No. 94–7226. STEPHEN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 94–7230. PLANTZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 876 P. 2d 268.

No. 94–7231. RHODES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 867.

No. 94–7236. JONES *v.* MARSHALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–7237. HYMANS *v.* WESTERN BANK, TAOS. Sup. Ct. N. M. Certiorari denied.

No. 94–7238. IWUALA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 20 F. 3d 1171.

No. 94–7243. SCHWARZ *v.* UTAH STATE TAX COMMISSION. Ct. App. Utah. Certiorari denied.

No. 94–7244. FONDREN *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 F. 3d 1097.

No. 94–7246. JONES *v.* BAKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 566.

No. 94–7250. COSNER *v.* HAWS, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–7251. SIMMS *v.* BRAXTON, ADMINISTRATOR, OCCOQUAN FACILITY. Ct. App. D. C. Certiorari denied.

No. 94–7253. BEY *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 137 N. J. 334, 645 A. 2d 685.

No. 94–7259. CASSIDY *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 94–7263. RUSSELL *v.* NORANDAL USA, INC., SCOTTSBORO DIVISION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 21 F. 3d 1125.

No. 94–7264. ROYSTER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7265. MOORE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 325.

No. 94–7266. LaFlamme *v.* White, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1400.

No. 94–7267. Moore *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 637 N. E. 2d 816.

No. 94–7268. Perea *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 94–7269. Paitsel *v.* Hargett, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied.

No. 94–7270. Damascus *v.* California Board of Dental Examiners. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 94–7271. Crooks *v.* Evatt, Commissioner, South Carolina Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 555.

No. 94–7272. Davis *v.* Scott, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 1379.

No. 94–7273. Njoku *v.* Schmidt. C. A. 2d Cir. Certiorari denied. Reported below: 29 F. 3d 621.

No. 94–7274. Lake *v.* County of Cattaraugus District Attorney's Office et al. C. A. 2d Cir. Certiorari denied.

No. 94–7275. Mann *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 231 Conn. 912, 648 A. 2d 158.

No. 94–7279. Olson *v.* Cole, Attorney General of Alaska. C. A. 9th Cir. Certiorari denied.

No. 94–7280. Harris *v.* Schaefer, Governor of Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 51.

No. 94–7283. Ross *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 230 Conn. 183, 646 A. 2d 1318.

No. 94–7285. Morton *v.* Scott, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 94–7286. PERRYMAN *v.* PRADO, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 94–7287. STEWART *v.* UNITED STATES; and
No. 94–7404. DAVIDSON, AKA BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 50 and 34 F. 3d 44.

No. 94–7289. MARTIN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 1411, 641 N. E. 2d 1110.

No. 94–7291. CHICHESTER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 248 Va. 311, 448 S. E. 2d 638.

No. 94–7292. CHIVARS *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1071.

No. 94–7293. RAPHLAH *v.* TEXAS BOARD OF HIGHER EDUCATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–7294. PARTEE *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 1011.

No. 94–7295. MICHENER *v.* ARA HEALTH SERVICES, INC., ET AL. Ct. App. Kan. Certiorari denied. Reported below: 19 Kan. App. 2d xxvi, 875 P. 2d 305.

No. 94–7296. ADAMS *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 94–7297. KISH *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 94–7301. CHEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 25 F. 3d 1061.

No. 94–7302. SOUTHERLAND *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 316 S. C. 377, 447 S. E. 2d 862.

No. 94–7304. WILLCUTT *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 39 F. 3d 1195.

No. 94–7305. FRAZIER *v.* OHIO. Ct. App. Ohio, Fairfield County. Certiorari denied.

No. 94–7311. ALOMA *v.* UNITED STATES; and
No. 94–7489. ESPINOSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 324.

No. 94–7312. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 34 F. 3d 569.

No. 94–7318. INGRAM *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1047.

No. 94–7320. COMBS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 3d 1480, 634 N. E. 2d 1027.

No. 94–7323. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 F. 3d 1407.

No. 94–7325. GRIFFIN *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7326. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 166.

No. 94–7332. HOUSE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–7333. FELTON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 642 So. 2d 867.

No. 94–7338. NOBLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 630.

No. 94–7339. OLD CHIEF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1103.

No. 94–7341. MCBRIDE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7345. THOMAS *v.* HUMFIELD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 566.

No. 94–7347. BORELAND *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7348. VOSS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 32 F. 3d 1269.

No. 94–7349. BRADLEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 94–7350. BRIDGES *v.* PITTSBURGH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 40 F. 3d 1240.

No. 94–7352. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1094.

No. 94–7353. ARDILA-CALDERON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 94–7356. DOE *v.* GAINER ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 162 Ill. 2d 15, 642 N. E. 2d 114.

No. 94–7358. ORIAKHI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1501.

No. 94–7360. MURRAY, AKA HINES *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94–7361. BANKS *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 36 F. 3d 1112.

No. 94–7362. BISHOP *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 94–7363. CALIA *v.* PARKER ET AL. C. A. 8th Cir. Certiorari denied.

No. 94–7364. PEMBERTON *v.* E. G. LOWRY CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 36 F. 3d 89.

No. 94–7365. ROBINSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 94–7366. CHAU HAI DO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 F. 3d 1507.

No. 94–7367. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 131.

No. 94–7368. CONTRERAS *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 94–7370. IRVING *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 643 A. 2d 365.

No. 94–7371. BURCH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 94–7372. BALL *v.* SCOTT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 37 F. 3d 1509.

No. 94–7374. STEPHEN *v.* CAUGHEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–7375. MONGA *v.* SOMMER. App. Ct. Mass. Certiorari denied. Reported below: 35 Mass. App. 761, 626 N. E. 2d 16.

No. 94–7376. LARSON *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 94–7378. ORNELAS-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94–7380. PORTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1104.

No. 94–7381. LACIO *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–7382. RUSSELL *v.* GUNN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 94–7383. STONER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–7384. WATKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 F. 3d 480.

No. 94–7385. WELCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 36 F. 3d 1098.

No. 94–7386. ZUCKERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1174.

No. 94–7387. HALLUMS *v.* HAMBRICK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 27 F. 3d 566.

No. 94–7389. HICKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 630.

No. 94–7390. SEARLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 636.

No. 94–7391. SORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 630.

No. 94–7392. TASBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 629.

No. 94–7393. SELIGSOHN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1173.

No. 94–7395. FOSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1497.

No. 94–7396. BRITO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1189.

No. 94–7397. MCVEY-MEHTA *v.* DEPARTMENT OF COMMERCE. C. A. Fed. Cir. Certiorari denied. Reported below: 36 F. 3d 1117.

No. 94–7398. VANCE *v.* BANKS. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 94 Ohio App. 3d 475, 640 N. E. 2d 1214.

No. 94–7399. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1179.

No. 94–7400. BASHEER *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied. Reported below: 43 F. 3d 1460.

No. 94–7402. GONZALEZ *v.* OCEAN COUNTY BOARD OF SOCIAL SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1486.

No. 94–7405. BLANCHFIELD *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 651 A. 2d 787.

No. 94–7407. FERMIN ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 32 F. 3d 674.

No. 94–7409. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1501.

No. 94–7410. CAREY *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7411. CANTU *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–7414. UNGER *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 94–7415. CROWDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 36 F. 3d 691.

No. 94–7416. WHITE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1106.

No. 94–7417. SAMUELS *v.* AIR TRANSPORT LOCAL 504 ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1501.

No. 94–7418. PIGOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 38 F. 3d 569.

No. 94–7420. HARRIS *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 94–7421. CUEVAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 1089.

No. 94–7422. LORANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 94–7423. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 1403.

No. 94–7424. CONNELLY *v.* GROSSMAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7426. SAPP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 574.

No. 94–7428. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1424.

No. 94–7429. STEINMARK *v.* UNITED STATES; and
No. 94–7601. TRAINOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 565.

No. 94–7430. SANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 632.

No. 94–7431. RODGERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7432. PESHOMME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 572.

No. 94–7433. PEDDLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1172.

No. 94–7435. WINTERS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 720.

No. 94–7437. SCOTT *v.* HYUNDAI MANUFACTURE OF FOUNTAIN VALLEY ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 645 So. 2d 454.

No. 94–7438. SIMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 F. 3d 355.

No. 94–7439. TIERNEY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 74 Wash. App. 346, 872 P. 2d 1145.

No. 94–7440. THOMAS *v.* METROPOLITAN DADE COUNTY ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 641 So. 2d 878.

No. 94–7441. CARTER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 879 P. 2d 1234.

No. 94–7442. CRAGO *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 93 Ohio App. 3d 621, 639 N. E. 2d 801.

No. 94–7443. CORRALES-QUINCENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7444. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1383.

No. 94–7446. BANH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–7447. CHAPA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 94–7450. MARTINEZ *v.* NEW MEXICO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1105.

No. 94–7451. STEPHENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 451.

No. 94–7452. WILLIAMS *v.* UNITED STATES SUPREME COURT ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–7453. ROUSE *v.* UNITED STATES;
No. 94–7496. BRYANT ET AL. *v.* UNITED STATES; and
No. 94–7521. WARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1094.

No. 94–7454. FITCH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 36 F. 3d 127.

No. 94–7456. MARTIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 94–7457. MCDANIEL *v.* CODY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 37 F. 3d 1509.

No. 94–7458. GOWEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 32 F. 3d 1466.

No. 94–7459. FELION *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1501.

No. 94–7461. LOCKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 F. 3d 1507.

No. 94–7462. ARCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 561.

No. 94–7463. HARRIS *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. Reported below: 26 F. 3d 1186.

No. 94–7465. KRAMER *v.* UNIVERSITY OF PITTSBURGH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1487.

No. 94–7466. CLIFTON *v.* SUBURBAN CABLE TELEVISION CO., INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 139, 642 A. 2d 512.

No. 94–7467. BREWER *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–7468. COURTNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 1119.

No. 94–7469. DILLEY *v.* GUNN ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–7472. YAMAMOTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7473. WILLIAMS *v.* KINCHELOE, SUPERINTENDENT, SPRING CREEK CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 37 F. 3d 1508.

No. 94–7474. THEODOROPOULOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1173.

No. 94–7475. STEWARD *v.* GWALTNEY OF SMITHFIELD, LTD. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1094.

No. 94–7476. WHITE *v.* WILKINSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–7477. BUCKLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1106.

No. 94–7478. BUSSELL *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 882 S. W. 2d 111.

No. 94–7479. SEVER *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied.

No. 94–7481. GOSSAGE *v.* OLDENKAMP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1187.

No. 94–7482. EWING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1217.

No. 94–7483. HOGAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 877 P. 2d 1157.

No. 94–7484. RICKMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 27 F. 3d 511.

No. 94–7486. MORRITZ *v.* GOVERNMENT OF ISRAEL. C. A. 7th Cir. Certiorari denied.

No. 94–7487. KRUPP *v.* NEUBERT, ADMINISTRATOR, BAYSIDE STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7488. JOHANSON *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 36 F. 3d 89.

No. 94–7490. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 F. 3d 1352.

No. 94–7491. RANDALL *v.* GOLDEN, ASSISTANT ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–7493. MEYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 566.

No. 94–7495. LILLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 37 F. 3d 1222.

No. 94–7497. AUSTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 F. 3d 1514.

No. 94–7498. ARIAS-SANTOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 39 F. 3d 1070.

No. 94–7499. ARTERBERRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 39 F. 3d 1193.

No. 94–7500. SHARP *v.* VIRGINIA STATE BAR. Sup. Ct. Va. Certiorari denied.

No. 94–7501. HILARIOS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 562.

No. 94–7502. CESTNIK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 904.

No. 94–7503. CALDERON-RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 636.

No. 94–7504. CABRAL-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 182.

No. 94–7506. AREVALO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–7508. SLOANE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 38 F. 3d 568.

No. 94–7510. REAL-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 632.

No. 94–7515. GARCIA *v.* UNITED STATES;
No. 94–7534. FUENTES *v.* UNITED STATES; and
No. 94–7661. NIETO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 38 F. 3d 568.

No. 94–7516. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 633.

No. 94–7519. BUSTAMANTE LOMAS *v.* UNITED STATES; and PEREZ-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 F. 3d 1191 (first case); 46 F. 3d 1148 (second case).

No. 94–7522. DAWSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 36 F. 3d 1099.

No. 94–7525. WILLIAMS *v.* MEESE, FORMER ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 32 F. 3d 563.

No. 94–7527. EGWUONWU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 94–7529. CLARK-RUBIN *v.* OHIO STATE UNIVERSITY HOSPITALS, INC. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 94–7531. DITTER *v.* CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1393.

No. 94–7532. BORROMEO *v.* JOHNSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1175.

No. 94–7533. ESCOBEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 562.

No. 94–7535. DABNEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 94–7538. REYNOLDS *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 94–7539. KOVACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 F. 3d 1242.

No. 94–7540. KENNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 F. 3d 1245.

No. 94–7541. MASSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 94–7544. FIEL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 997.

No. 94–7546. AYERS *v.* TAYLOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 43 F. 3d 1465.

No. 94–7548. ALLISON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 40 F. 3d 850.

No. 94–7549. BANKS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 161 Ill. 2d 119, 641 N. E. 2d 331.

No. 94–7550. ADAMS *v.* MELNICK/NICKEL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 F. 3d 1460.

No. 94–7554. ORETO ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 37 F. 3d 739.

No. 94–7555. RUTLEDGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 F. 3d 998.

No. 94–7559. KRAUSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 324.

No. 94–7560. KING *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 38 F. 3d 610.

No. 94–7561. SHANNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 38 F. 3d 569.

No. 94–7562. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 635.

No. 94–7563. ABLES *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–7564. HICKS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 38 F. 3d 610.

No. 94–7565. HILL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 F. 3d 1241.

No. 94–7566. HARPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 F. 3d 60.

No. 94–7569. MITCHELL *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 571.

No. 94–7572. JORDAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 43 F. 3d 712.

No. 94–7575. LANIER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 641 So. 2d 879.

No. 94–7576. SCHOOLFIELD, AKA KB–X *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 132.

No. 94–7577. VALENTINE, AKA NETON, AKA NEWTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 1070.

No. 94–7578. WILHELM *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–7583. PRIOLEAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 40 F. 3d 1236.

No. 94–7584. SIMMONS *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 1478.

No. 94–7587. AUSTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 1054.

No. 94–7590. RICHMOND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 37 F. 3d 418.

No. 94–7591. SMITH *v.* LAMAR, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–7599. ORTIZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 38 F. 3d 610.

No. 94–7600. RAY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 38 F. 3d 610.

No. 94–7602. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1179.

No. 94–7605. MCMURRAY ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 1405.

No. 94–7606. MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 1229.

No. 94–7607. MARTINEZ-ESTRADA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 572.

No. 94–7609. NEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 1035.

No. 94–7611. JACKSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–7613. ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 42 F. 3d 644.

No. 94–7618. SNOW *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 876 P. 2d 291.

No. 94–7624. CONNORS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1486.

No. 94–7633. MCHENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1217.

No. 94–7634. MCKENZIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1496.

No. 94–7637. CAHOON *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–7638. THORPE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–7639. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1497.

No. 94–7643. CALLAHAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 F. 3d 1213.

No. 94–7644. NIEVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 1119.

No. 94–7647. SALAS-MUNIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 319.

No. 94–7648. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1179.

No. 94–7650. ALEXANDRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 388.

No. 94–7653. VISCAINO-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 F. 3d 1516.

No. 94–7654. LONG CROW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 37 F. 3d 1319.

No. 94–7655. SHULER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 573.

No. 94–7656. ANDERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–7658. FRUTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 36 F. 3d 649.

No. 94–7659. LUBBEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 F. 3d 1219.

No. 94–7662. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 F. 3d 1386.

No. 94–7665. CHAPA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 319.

No. 94–7667. CLAYBROOK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–7671. PAUL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 94–7673. SERRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 572.

No. 94–7674. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 43 F. 3d 1473.

No. 94–7675. LEZINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1189.

No. 94–7676. KALINOWSKI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1533.

No. 94–7677. SANTANA-LOPEZ, CHARGED AS LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1190.

No. 94–7679. ARMOUR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1217.

No. 94–7680. STEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 F. 3d 1407.

No. 94–7685. TAI TAN DUONG *v.* UNITED STATES; and
No. 94–7721. CHI THIEN DUONG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 38 F. 3d 570.

No. 94–7688. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 F. 3d 1294.

No. 94–7689. PIKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 36 F. 3d 1011.

No. 94–7690. POWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 572.

No. 94–7695. ASHLEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 37 F. 3d 678.

No. 94–7696. ELEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 319.

No. 94–7697. NEGRIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 324.

No. 94–7701. PUENTES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1171.

No. 94–7705. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 324.

No. 94–7706. THURSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 324.

No. 94–7707. YANNOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 42 F. 3d 999.

No. 94–7708. UMANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7709. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 38 F. 3d 568.

No. 94–7711. JOHNSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 265.

No. 94–7712. LEAL ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 30 F. 3d 577.

No. 94–7713. CLARY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 34 F. 3d 709.

No. 94–7714. CIMINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 F. 3d 635.

No. 94–7716. PUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 573.

No. 94–7717. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 320.

No. 94–7718. FARR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7719. FARMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 133.

No. 94–7726. STACKHOUSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1497.

No. 94–7727. JENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 37 F. 3d 1502.

No. 94–7728. WAYNO *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1111.

No. 94–7729. WOODY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 45 F. 3d 431.

No. 94–7746. FALLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1178.

No. 94–7749. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 320.

No. 94–7756. SHEEK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 F. 3d 1245.

No. 94–892. C. W., BY HER GUARDIAN AD LITEM, MCKINLEY *v.* WASIEK. Super. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 433 Pa. Super. 167, 640 A. 2d 427.

No. 94–920. CALDERON, WARDEN, ET AL. *v.* SIRIPONGS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 35 F. 3d 1308.

No. 94–922. MICHIGAN *v.* ANDERSON. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 446 Mich. 392, 521 N. W. 2d 538.

No. 94–1076. RITZ, ASSISTANT ATTORNEY GENERAL OF COLORADO *v.* GAGAN. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 35 F. 3d 1473.

No. 94–972. TRI-STATE MACHINE, INC. *v.* NATIONWIDE LIFE INSURANCE CO. C. A. 4th Cir. Motions of Hanley C. Clark and National Association of Insurance Commissioners for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 33 F. 3d 309.

No. 94–987. WMX TECHNOLOGIES, INC., ET AL. *v.* CANADIAN GENERAL INSURANCE CO. ET AL. Sup. Ct. N. J. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 138 N. J. 106, 649 A. 2d 379.

No. 94–1079. UNITED TECHNOLOGIES CORP. ET AL. *v.* BROWNING-FERRIS INDUSTRIES, INC., ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 33 F. 3d 96.

No. 94–1033. COMPUTER CURRICULUM CORP. *v.* INSTRUCTIONAL SYSTEMS, INC., ET AL. C. A. 3d Cir. Motions of Na-

tional Association of Manufacturers et al. and Computing Technology Industry Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 35 F. 3d 813.

No. 94–1099. CPC INTERNATIONAL, INC. *v.* ARCHER DANIELS MIDLAND CO. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 31 F. 3d 1176.

No. 94–1121. APPLE COMPUTER, INC. *v.* MICROSOFT CORP. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 35 F. 3d 1435.

No. 94–1124. HENSLER *v.* CITY OF GLENDALE. Sup. Ct. Cal. Motion of National Association of Home Builders for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 8 Cal. 4th 1, 876 P. 2d 1043.

No. 94–1137. AUTO-OWNERS INSURANCE CO. *v.* THORN APPLE VALLEY, INC. C. A. 6th Cir. Motion of Michigan Association of Insurance Companies et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 31 F. 3d 371.

No. 94–7254. BARBER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 889 S. W. 2d 185.

Opinion of JUSTICE STEVENS, respecting the denial of the petition for writ of certiorari.

On occasion it is appropriate to restate the settled proposition that this Court's denial of certiorari does not constitute a ruling on the merits. *United States* v. *Carver*, 260 U. S. 482, 490 (1923). See also *Singleton* v. *Commissioner*, 439 U. S. 940, 942–946 (1978) (opinion of STEVENS, J., respecting denial of petition for writ of certiorari). In this case, for example, there are valid reasons for the Court's decision to deny review. But this does not mean petitioner's challenge to his death sentence, based in part upon the trial judge's definition of an aggravating circumstance, lacks merit. Under the trial court's instruction, a jury could find an aggravating circumstance sufficient to impose the death penalty merely by concluding that a murderer's state of mind was "'wicked or morally corrupt.'" Pet. for Cert. 3. Because such a state of mind is a characteristic of every murder, the instruction

is plainly impermissible under this Court's holdings in *Godfrey* v. *Georgia*, 446 U. S. 420, 428–429 (1980) (striking down instruction allowing jury to find aggravating circumstance if murder was "'outrageously or wantonly vile, horrible and inhuman'"), and *Maynard* v. *Cartwright*, 486 U. S. 356, 363–364 (1988) ("'especially heinous, atrocious, or cruel'").

No. 94–7589. KLINGER ET AL. *v.* NEBRASKA DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Motion of National Women's Law Center et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 31 F. 3d 727.

No. 94–7623 (A–512). BURDINE *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.

Rehearing Denied

No. 93–1140. JAMES B. BEAM DISTILLING CO. *v.* GEORGIA ET AL., *ante*, p. 1056;

No. 93–6735. GOINES ET AL. *v.* JAMES ET AL., 510 U. S. 1057;

No. 93–8976. KENT *v.* BECHTEL GROUP, INC., *ante*, p. 830;

No. 94–622. GREENE *v.* SOUTH CAROLINA ELECTION COMMISSION ET AL., *ante*, p. 1017;

No. 94–639. MCKENNA *v.* UNITED STATES, *ante*, p. 1002;

No. 94–5005. STEARMAN *v.* CITY OF GREENVILLE, TEXAS, ET AL., *ante*, p. 879;

No. 94–5038. STEARMAN *v.* UNITED STATES, *ante*, p. 933;

No. 94–5470. STANKOWSKI *v.* NEW JERSEY, *ante*, p. 949;

No. 94–5684. GREER *v.* PENNSYLVANIA, *ante*, p. 936;

No. 94–5868. PEW *v.* COX, *ante*, p. 969;

No. 94–6199. MILLER *v.* UNITED STATES, *ante*, p. 977;

No. 94–6201. LOVE *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1022;

No. 94–6251. ENGLERT *v.* SMALL BUSINESS ADMINISTRATION, *ante*, p. 1086;

No. 94–6348. JAMERSON *v.* CALIFORNIA, *ante*, p. 1025;

No. 94–6358. DIAZ LOPEZ *v.* COMMONWEALTH OIL REFINING CO., INC., ET AL., *ante*, p. 1025;

No. 94–6391. IN RE SMITH, *ante*, p. 1075;

No. 94–6455. WATSON ET AL. *v.* FARLOW ET AL., *ante*, p. 1047;

No. 94–6465. ALDERMAN *v.* THOMAS, WARDEN, *ante*, p. 1061;

No. 94–6512. ROY *v.* UNIVERSITY OF HAWAII ET AL., *ante*, p. 1062;

No. 94–6547. CLARK *v.* MARYLAND, *ante*, p. 1048;

No. 94–6569. LONG *v.* LOUISIANA, *ante*, p. 1062;

No. 94–6645. FARR *v.* DAVIS ET AL., *ante*, p. 1063;

No. 94–6650. MCDOWELL *v.* UNITED STATES, *ante*, p. 1031;

No. 94–6669. VAN HOOK *v.* OHIO, *ante*, p. 1063;

No. 94–6700. JUDD *v.* GONZALES, SECRETARY OF STATE OF NEW MEXICO, *ante*, p. 1089;

No. 94–6744. HARTFORD *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY, *ante*, p. 1090;

No. 94–6774. CORRIGAN *v.* UNITED STATES, *ante*, p. 1063;

No. 94–6796. BETKA *v.* SMITH ET UX., *ante*, p. 1092;

No. 94–6798. CHATTERS *v.* THURMAN, WARDEN, ET AL., *ante*, p. 1092;

No. 94–6811. BROWN *v.* NOBLES, *ante*, p. 1093;

No. 94–6812. BURLEY *v.* MCDONNELL DOUGLAS HELICOPTER CO., *ante*, p. 1093;

No. 94–6930. THAKKAR *v.* DEBEVOISE, *ante*, p. 1097;

No. 94–6952. HENSLER *v.* UNITED STATES, *ante*, p. 1098;

No. 94–6998. BROWN *v.* MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1099;

No. 94–7284. IN RE ROEMER, *ante*, p. 1109; and

No. 94–7355. IN RE BOND, *ante*, p. 1109. Petitions for rehearing denied.

No. 94–793. EICK *v.* UNITED STATES, *ante*, p. 1059;

No. 94–5204. HINES *v.* ROCHA, WARDEN, *ante*, p. 890; and

No. 94–6557. GREENE *v.* PHELPS ET AL., *ante*, p. 1062. Motions for leave to file petitions for rehearing denied.

FEBRUARY 27, 1995

Certiorari Granted—Vacated and Remanded

No. 94–1170. JOHNSON ET AL. *v.* AMERICAN AIRLINES, INC., ET AL. App. Ct. Ill., 1st Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *American Airlines, Inc.* v. *Wolens*, *ante*, p. 219. Reported below: 261 Ill. App. 3d 622, 633 N. E. 2d 978.

No. 94–6308. ROBINSON *v.* ARVONIO, SUPERINTENDENT, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Motion of peti-

tioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *O'Neal* v. *McAninch*, *ante*, p. 432. Reported below: 27 F. 3d 877.

Miscellaneous Orders

No. ——. WHEELER *v.* UNITED STATES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. D–1461. IN RE DISBARMENT OF WEINFELD. Disbarment entered. [For earlier order herein, see *ante*, p. 923.]

No. D–1468. IN RE DISBARMENT OF LAUDANI. Disbarment entered. [For earlier order herein, see *ante*, p. 997.]

No. D–1470. IN RE DISBARMENT OF ROCKER. Disbarment entered. [For earlier order herein, see *ante*, p. 1037.]

No. D–1471. IN RE DISBARMENT OF NILES. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1472. IN RE DISBARMENT OF CULLEN. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1473. IN RE DISBARMENT OF BOSTIC. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. D–1474. IN RE DISBARMENT OF MURPHY. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1475. IN RE DISBARMENT OF KINCAID. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1476. IN RE DISBARMENT OF GIBBES. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1477. IN RE DISBARMENT OF DAWKINS. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1479. IN RE DISBARMENT OF KING. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–1482. IN RE DISBARMENT OF KNIGHT. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–1483. IN RE DISBARMENT OF MORIN. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–1484. IN RE DISBARMENT OF ALTSCHUL. Disbarment entered. [For earlier order herein, see *ante*, p. 1055.]

No. D–1505. IN RE DISBARMENT OF BEITLER. It is ordered that Roger Beitler, of Sun City, Cal., be suspended from the practice of law in this Court and that a rule 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–1510. IN RE DISBARMENT OF WATSON. It is ordered that John E. Watson, of St. Petersburg, Fla., be suspended from the practice of law in this Court and that a rule 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–1511. IN RE DISBARMENT OF ZELTZER. It is ordered that J. Jerry Zeltzer, of Miami Beach, Fla., be suspended from the practice of law in this Court and that a rule 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–1512. IN RE DISBARMENT OF PELS. It is ordered that Kenneth Anthony Pels, of Washington, D. C., be suspended from the practice of law in this Court and that a rule 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–1513. IN RE DISBARMENT OF POLANSKY. It is ordered that Stanley Polansky, of Babylon, N. Y., be suspended from the practice of law in this Court and that a rule 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–1514. IN RE DISBARMENT OF MAZER. It is ordered that Lawrence Mazer, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule 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–1515. IN RE DISBARMENT OF SIMONE. It is ordered that Robert F. Simone, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule 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–1516. IN RE DISBARMENT OF KENT. It is ordered that Michael Gayhart Kent, of Huntingtown, Md., be suspended from the practice of law in this Court and that a rule 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–1517. IN RE DISBARMENT OF PROVINE. It is ordered that Leon Eggleston Provine, of Grenada, Miss., be suspended from the practice of law in this Court and that a rule 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–1518. IN RE DISBARMENT OF GOUIRAN. It is ordered that Emile E. Gouiran, of Paris, France, be suspended from the practice of law in this Court and that a rule 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. 94–7636. IN RE GAYDOS. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until March 20, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 94–7917. IN RE BRANCH. Petition for writ of habeas corpus denied.

No. 94–7574. IN RE WILLIAMS; and
No. 94–7598. IN RE ADAMS. Petitions for writs of mandamus denied.

Certiorari Granted

No. 94–1139. GOVERNMENT EMPLOYEES INSURANCE CO. ET AL. *v.* DUANE. C. A. 4th Cir. Certiorari granted. Reported below: 37 F. 3d 1036.

Certiorari Denied

No. 93–9434. MCGAHEE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 632 So. 2d 981.

No. 94–847. WEXLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 F. 3d 117.

No. 94–852. COMMISSIONER OF INTERNAL REVENUE *v.* BAPTISTE. C. A. 8th Cir. Certiorari denied. Reported below: 29 F. 3d 433.

No. 94–989. SAM BROWN CO. *v.* JACOBS MANUFACTURING CO. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 3d 1259.

No. 94–1002. ZAIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 35 F. 3d 567.

No. 94–1010. NATIONAL UNION FIRE INSURANCE CO. *v.* CNA INSURANCE COS. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 28 F. 3d 29.

No. 94–1012. MANVILLE SALES CORP. ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 27 F. 3d 1089.

No. 94–1026. MERRIAM-WEBSTER, INC. *v.* RANDOM HOUSE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 35 F. 3d 65.

No. 94–1048. NATIONAL FOOTBALL LEAGUE ET AL. *v.* SULLIVAN; and

No. 94–1206. SULLIVAN *v.* NATIONAL FOOTBALL LEAGUE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 34 F. 3d 1091.

No. 94–1070. GENERAL ELECTRIC CO. ET AL. *v.* INGRAM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 35 F. 3d 717.

No. 94–1147. VIDEO VISIONS, INC., ET AL. *v.* KONSTAM, DIRECTOR OF LAW FOR CITY OF MANSFIELD, OHIO. Ct. App. Ohio, Richland County. Certiorari denied.

No. 94–1148. HUPPELER ET AL. *v.* OSCAR MAYER FOODS CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 32 F. 3d 245.

No. 94–1166. SCARFIA *v.* TRAVELERS INDEMNITY CO. C. A. 11th Cir. Certiorari denied. Reported below: 33 F. 3d 1383.

No. 94–1167. KACHINA PLYWOOD, INC., ET AL. *v.* HURT. C. A. 9th Cir. Certiorari denied. Reported below: 26 F. 3d 130.

No. 94–1172. SKYLINE LODGE, INC. *v.* DELANEY ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 95 Ohio App. 3d 264, 642 N. E. 2d 395.

No. 94–1178. SULTENFUSS *v.* SNOW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 1494.

No. 94–1180. HARBOLD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 262 Ill. App. 3d 1067, 635 N. E. 2d 900.

No. 94–1181. STARNES *v.* CAPITAL CITIES MEDIA ET AL. (two cases). App. Ct. Ill., 5th Dist. Certiorari denied.

No. 94–1184. NOVATEL COMPUTER SYSTEMS, INC. *v.* CRAY COMMUNICATIONS, INC., FKA DOWTY COMMUNICATIONS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 33 F. 3d 390.

No. 94–1185. CITY OF CHANUTE ET AL. *v.* WILLIAMS NATURAL GAS CO. C. A. 10th Cir. Certiorari denied. Reported below: 31 F. 3d 1041.

No. 94–1189. ROSENBAUM *v.* ROSENBAUM. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 256 Ill. App. 3d 1107, 671 N. E. 2d 836.

No. 94–1190. FISHER *v.* FITT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 40 F. 3d 1236.

No. 94–1192. JENKINS *v.* WEIS. Ct. App. Utah. Certiorari denied. Reported below: 868 P. 2d 1374.

No. 94–1193. THOMURE *v.* PHILLIPS FURNITURE CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 30 F. 3d 1020.

No. 94–1194. SARDY *v.* HODGE, EXECUTRIX OF THE ESTATE OF HODGE, DECEASED. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 548, 448 S. E. 2d 355.

No. 94–1197. DAVIS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 260 Ill. App. 3d 176, 631 N. E. 2d 392.

No. 94–1198. DREKSLER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 259 Ill. App. 3d 1042, 674 N. E. 2d 1280.

No. 94–1199. ZISK *v.* HIGH STREET ASSOCIATES. App. Ct. Conn. Certiorari denied. Reported below: 34 Conn. App. 922, 643 A. 2d 311.

No. 94–1201. BLANKENBURG ET AL. *v.* CORBIN, TRUSTEE AND FIDUCIARY OF THE PATTERN & MODEL MAKERS' ASSOCIATION OF WARREN & VICINITY PENSION FUND (DEFINED BENEFIT). C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 650.

No. 94–1232. OHIO SAVINGS BANK *v.* ESTATE OF POPP. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 94 Ohio App. 3d 640, 641 N. E. 2d 739.

No. 94–1265. WOLVERINE, LTD., ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1190.

No. 94–1274. MARTINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 37 F. 3d 353.

No. 94–1275. NATIONALIST MOVEMENT *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 216.

No. 94–1279. MCELROY *v.* UNITED STATES; DUCHINSKY *v.* UNITED STATES; OWENS *v.* UNITED STATES; MARTZ *v.* UNITED STATES; and HEBERT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 40 M. J. 368 (first case); 41 M. J. 375 (second and third cases); 42 M. J. 9 (fourth case); 41 M. J. 376 (fifth case).

No. 94–1282. WARD *v.* UNIVERSITY OF TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 1183.

No. 94–6175. EMERY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 881 S. W. 2d 702.

No. 94–6460. WARD *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 21 F. 3d 1355.

No. 94–6612. JAMES *v.* RUNYON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied.

No. 94–7020. DANDRIDGE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 36 F. 3d 773.

No. 94–7092. VANTERPOOL, aka ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 94–7119. WEEKS *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 26 F. 3d 1030.

No. 94–7122. SALCIDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 F. 3d 1244.

No. 94–7136. HUFFSTETLER *v.* FRENCH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 F. 3d 1209.

No. 94–7142. HERNANDEZ PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1403.

No. 94–7147. RUTLEDGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 F. 3d 671.

No. 94–7419. GUTIERREZ *v.* TOOMBS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–7494. MUSGRAVE *v.* WELBORN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94–7505. SLOAN *v.* WILKINSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 28 F. 3d 1214.

No. 94–7507. PARISH *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 645 So. 2d 910.

No. 94–7509. PIZZO *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94–7512. SATCHER *v.* NETHERLAND, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 94–7514. SNYDER *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 94–7517. NICHOLAS *v.* WRIGHT, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1103.

No. 94–7520. MUHAMMAD, aka WILLIAMS *v.* HAWLEY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–7523. BROOKINGS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 94–7528. DIXON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94–7536. CARTER *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT. C. A. 2d Cir. Certiorari denied.

No. 94–7537. MAYES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 887 P. 2d 1288.

No. 94–7542. CHAMBERS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 261 Ill. App. 3d 123, 633 N. E. 2d 123.

No. 94–7543. JACKSON *v.* ROCHESTER HOUSING AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–7545. BOND *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 642 So. 2d 674.

No. 94–7551. COOPER *v.* RIGGS ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–7556. SPENCER *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 36 F. 3d 1101.

No. 94–7558. PLEDGER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–7567. BROOKS *v.* FORD MOTOR CO. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 565.

No. 94–7571. SLAVIN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 84 N. Y. 2d 863, 642 N. E. 2d 327.

No. 94–7592. OLLIE *v.* ROSEMEYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG. C. A. 3d Cir. Certiorari denied.

No. 94–7593. WATKINS *v.* DIPAOLO, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION. C. A. 1st Cir. Certiorari denied. Reported below: 37 F. 3d 1484.

No. 94–7594. BLAMEUSER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 258 Ill. App. 3d 1081, 674 N. E. 2d 955.

No. 94–7596. JOHNSTON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 640 So. 2d 1102.

No. 94–7597. AYERS *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 45 F. 3d 425.

No. 94–7608. LUTON *v.* GRANDISON, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 44 F. 3d 626.

No. 94–7615. MCGUIRE *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 94–7616. DIAZ *v.* MCCLELLAN, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 94–7617. GUMPL *v.* WILKINSON ET AL. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 94–7640. VEY *v.* COLVILLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–7700. KEYS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 43 F. 3d 668.

No. 94–7722. HARRIS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 94–7740. RISHOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 284.

No. 94–7741. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 28 F. 3d 1487.

No. 94–7757. QUINTERO *v.* UNITED STATES;
No. 94–7787. RODRIGUEZ *v.* UNITED STATES; and
No. 94–7848. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 F. 3d 1317.

No. 94–7758. CUNNINGHAM *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 117.

No. 94–7759. JEFFERY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 F. 3d 63.

No. 94–7761. JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7762. MCMANUS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 40 F. 3d 474.

No. 94–7763. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94–7766. MORRELL ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1223.

No. 94–7767. LOWERY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1172.

No. 94–7769. JEFFRIES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 1182.

No. 94–7771. MCCRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 325.

No. 94–7772. LONGSTREET *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 94–7773. MCQUEEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 1182.

No. 94–7775. MCNAIR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–7780. ESPINOZA-PADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1403.

No. 94–7781. HUFF *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1496.

No. 94–7783. OGUNGBE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1189.

No. 94–7784. ROGERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1190.

No. 94–7792. CALVERLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 F. 3d 160.

No. 94–7793. CLEMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1217.

No. 94–7795. CURTIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–7798. COLEMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 38 F. 3d 856.

No. 94–7805. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 F. 3d 1509.

No. 94–7806. WILDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 F. 3d 1497.

No. 94–7807. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 F. 3d 1179.

No. 94–7809. THORNTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1104.

No. 94–7817. LOMASK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1189.

No. 94–7828. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 320.

No. 94–7829. TROTTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 389.

No. 94–7835. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 442.

No. 94–7837. BENITEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 34 F. 3d 1489.

No. 94–7838. JEANES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 37 F. 3d 1501.

No. 94–7841. RONEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1190.

No. 94–7842. STAUDT *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 185 Wis. 2d 916, 520 N. W. 2d 290.

No. 94–7843. FILLMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 638.

No. 94–7845. ROSALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1190.

No. 94–7847. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 F. 3d 95.

No. 94–7849. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 F. 3d 132.

No. 94–7865. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7866. CARBALLO-MENENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–7868. KREUTZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1103.

No. 94–7876. KEEL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 337 N. C. 469, 447 S. E. 2d 748.

No. 94–7879. VIOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 F. 3d 50.

No. 93–1098. OUTBOARD MARINE CORP. *v.* WOLTERING, ADMINISTRATOR OF THE ESTATE OF GRACE, DECEASED. App. Ct. Ill., 5th Dist. Motion of National Marine Manufacturers' Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 245 Ill. App. 3d 684, 615 N. E. 2d 86.

No. 94–981. O & G SPRING & WIRE FORMS SPECIALTY CO. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 7th Cir. Motion of petitioner for leave to clarify or amend petition for writ of certiorari granted. Certiorari denied. Reported below: 38 F. 3d 872.

No. 94–1188. AMERICAN PRESIDENT LINES, LTD., ET AL. *v.* GAMMA-10 PLASTICS, INC. C. A. 8th Cir. Motion of Assurance-foreningen Skuld et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 32 F. 3d 1244.

No. 94–7552. COOPER *v.* NATIONAL RX SERVICES. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 35 F. 3d 577.

No. 94–7657. LINEHAN *v.* HARVARD UNIVERSITY. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 29 F. 3d 619.

Rehearing Denied

No. 93–8730. GILES *v.* ALABAMA, 512 U. S. 1213;

No. 94–662. CITY OF HENDERSON ET AL. *v.* NEVADA ENTERTAINMENT INDUSTRIES, INC., ET AL., *ante*, p. 1078;

No. 94–803. KNIGHTEN *v.* CAVE & MCKAY ET AL., *ante*, p. 1080;

No. 94–5747. LEDFORD *v.* GEORGIA, *ante*, p. 1085;

No. 94–6038. WILKERSON *v.* WHITLEY, WARDEN, ET AL., *ante*, p. 1085;

No. 94–6112. FORD *v.* UNITED STATES, *ante*, p. 1085;

No. 94–6415. QUEEN *v.* TEXAS, *ante*, p. 1115;

No. 94–6479. MIKKILINENI *v.* AMWEST SURETY INSURANCE CO. ET AL.; MIKKILINENI *v.* CHESTER ET AL.; MIKKILINENI *v.* BOROUGH OF FOREST HILLS; and MIKKILINENI *v.* GLENN ENGINEERING & ASSOCIATES, LTD., ET AL., *ante*, p. 1047;

No. 94–6480. MIKKILINENI *v.* BOROUGH OF FOREST HILLS, *ante*, p. 1047;

No. 94–6661. HUTTO *v.* NORTH AMERICAN VAN LINES, *ante*, p. 1088;

No. 94–6692. DOE *v.* IOWA ET AL., *ante*, p. 1089;

No. 94–6747. SIMONSON *v.* SIMONSON, *ante*, p. 1090;

No. 94–6783. KISKILA ET UX. *v.* BUSINESS EXCHANGE, INC., ET AL., *ante*, p. 1092;

No. 94–6841. WITCHER *v.* WITCHER, *ante*, p. 1094;

No. 94–6863. CASSIDY *v.* INDUSTRIAL INDEMNITY CO. ET AL., *ante*, p. 1095;

No. 94–6870. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL.; and WILLIAMS *v.* NATIONAL ASSOCIATION OF LETTER CARRIERS OF THE USA ET AL., *ante*, p. 1095;

No. 94–6928. LEAPHART *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1097;

No. 94–7019. WISHON *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, *ante*, p. 1100; and

No. 94–7046. ANDERSON *v.* DEPARTMENT OF THE AIR FORCE ET AL., *ante*, p. 1100. Petitions for rehearing denied.

Reporter's Note

The next page is purposely numbered 1301. The numbers between 1199 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINIONS OF INDIVIDUAL JUSTICES IN CHAMBERS

IN RE DOW JONES & CO., INC.

ON APPLICATION FOR STAY

No. A–369. Decided December 5, 1994

The application of Dow Jones & Co., Inc., for a stay of the Court of Appeals' November 3, 1994, order filed "under seal," so that Dow Jones can publish and report on the order and its contents, is moot. A later order in which the Court of Appeals denied Dow Jones' motion for reconsideration and discussed the November 3 order and its contents was not filed "under seal."

CHIEF JUSTICE REHNQUIST, Circuit Justice.

On November 3, 1994, the United States Court of Appeals for the District of Columbia Circuit, Division for Appointing Independent Counsels, issued an order denying Dow Jones & Company, Inc.'s (Dow Jones) "Motion for Disclosure of and Access to Report of Former Independent Counsel Robert B. Fiske." That order was filed "under seal," apparently to prohibit Dow Jones from publishing or reporting on the order or its contents. Dow Jones subsequently filed a motion to unseal the November 3, 1994, order (which has not been ruled on) and a motion for reconsideration of the November 3, 1994, order.

On November 22, 1994, Dow Jones filed in this Court an emergency application for stay of the November 3, 1994, order, seeking permission only to publish and report on the Court of Appeals' order and its contents. The following day, the Court of Appeals denied Dow Jones' previously filed motion for reconsideration by an order in which it discussed the November 3, 1994, order and its contents, and gave its rea-

sons for refusing to release the report of Independent Counsel Fiske. This order was *not* filed "under seal," and there is no indication that Dow Jones is prohibited from reporting on or publishing this order. Because Dow Jones may report on and publish this second order, which refers to the November 3, 1994, order and its contents, I believe that Dow Jones' emergency application for stay is moot.

Opinion in Chambers

O'CONNELL, GUARDIAN AD LITEM FOR BABY BOY RICHARD *v.* KIRCHNER

ON APPLICATION FOR STAY

No. A–555. Decided January 28, 1995*

Applications by the guardian ad litem for Baby Boy Richard and by his adoptive parents are denied. In seeking to recall the Illinois Supreme Court's mandate and to stay that court's issuance of a writ of habeas corpus directing that Richard's custody be transferred to his natural father, they argue that no writ of habeas corpus ordering a change in custody can be issued absent a full and fair hearing because Richard has a constitutional liberty interest in remaining with his adoptive parents and they have a liberty interest in maintaining their relationship with him. However, this argument cannot succeed. The underlying liberty interests have already been the subject of exhaustive proceedings in the Illinois courts, culminating in the decision that Richard's biological father is entitled to present custody. The habeas corpus proceeding from which the adoptive parents now seek relief adjudicated no new substantive rights, but merely enforced the mandate of the prior decision. Accordingly, applicants have received all the process due them under federal law.

JUSTICE STEVENS, Circuit Justice.

The guardian ad litem for Baby Boy Richard and his adoptive parents have filed with me in my capacity as Circuit Justice for the Seventh Circuit applications to recall the mandate of the Illinois Supreme Court and to stay that court's issuance of a writ of habeas corpus directing that custody of Baby Boy Richard be transferred to his natural father. The decision implements an earlier judgment entered by the Illinois Supreme Court, see *In re Petition of Doe*, 159 Ill. 2d 347, 638 N. E. 2d 181 (1994); two months ago, this Court denied a petition for certiorari seeking review of that judgment, *ante*, p. 994.

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*Together with No. A–558, *Doe et al.* v. *Kirchner*, also on application for stay.

The applications are based on a procedural due process theory that Baby Boy Richard has a constitutionally protected liberty interest in remaining in the family of John and Jane Doe, his adoptive parents, and that the Does have a liberty interest in maintaining their relationship with Richard. Under this theory, no writ of habeas corpus ordering a change in the child's custody could be issued absent a full and fair hearing. I accept the representation in footnote 5 of the Does' application that this claim was presented to the Illinois Supreme Court, at least as to the rights of the adoptive parents. I must therefore assume that the state court passed upon this claim and that this Court has jurisdiction. I have concluded, however, that the claim cannot succeed. The underlying liberty interests the applicants claim have already been the subject of exhaustive proceedings in the Illinois courts, culminating in the Illinois Supreme Court's decision last year. The result of those proceedings was a determination that the biological father was entitled to present custody. The habeas corpus proceeding from which the adoptive parents now seek relief was an execution of the court's prior decision, ordering the adoptive parents to surrender custody "forthwith." That order adjudicated no new substantive rights, but merely enforced the mandate of the prior decision. Accordingly, applicants have received all the process due them under federal law.

The adoptive parents also claim that Illinois law requires an additional hearing in these circumstances. But the highest court in the State apparently disagrees; for if applicants correctly described their state-law entitlement, the Supreme Court of the State would have ordered the hearing they seek. I have no authority to review that court's interpretation of the law of Illinois. Finally, the regrettable facts that an Illinois court entered an erroneous adoption decree in 1992 and that the delay in correcting that error has had such unfortunate effects on innocent parties are, of course, not matters that I have any authority to consider in connection

with the dispositions of the pending applications for federal relief.

Accordingly, both stay applications are denied.

It is so ordered.

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