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AMENDMENTS OF RULES

BUILDING REGULATIONS

In Memoriam

JUSTICE BYRON R. WHITE

UNITED STATES REPORTS

VOLUME 537

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2002

BEGINNING OF TERM

OCTOBER 7, 2002, THROUGH MARCH 4, 2003

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE 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.

OFFICERS OF THE COURT

JOHN D. ASHCROFT, Attorney General.
THEODORE B. OLSON, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
PAMELA TALKIN, Marshal.
SHELLEY L. DOWLING, Librarian.

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.)

PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF JUSTICE WHITE*

MONDAY, NOVEMBER 18, 2002

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

THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Court in tribute to our late colleague and friend, Justice Byron R. White.

The Court recognizes the Solicitor General.

The Solicitor General addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

At a meeting today of the Bar of this Court, Resolutions memorializing our deep respect and affection for Justice White were unanimously adopted. With the Court's leave, I shall summarize the Resolutions and ask that they be set forth in their entirety in the records of the Court.

Those of us who argued before Justice White, representing all shades of opinion at the bar, respected his impeccable preparation and acute interrogations. We realized that oral argument was not simply a tribute that tradition paid to due process but, at least for him, a means for clarifying his un-

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*Justice White, who retired from the Court effective June 28, 1993 (509 U. S. IX), died in Denver, Colorado, on April 15, 2002 (535 U. S. V).

derstanding of the case in all of its ramifications. Many of us feared his questions far more than the arguments of our adversaries. He cut to the heart of a case, but also sharply identified the consequences of a theory that was more convenient than durable. Lawyers who refused to come face to face with what he viewed to be the pivotal issue in a case could be met with a withering stare or abrupt dismissal. Yet his questioning was never cruel or punitive. He expected the best presentation from the best advocates, and he manifested compassion for those who had been propelled by their cases from run-of-the-mine practice in local courts to the unfamiliar terrain of the highest Court in the country.

When he was asked at his confirmation hearings to define the constitutional role of the Supreme Court, he replied simply: "to decide cases." To those who watched and read his work over three decades, the statement was a credo. He saw the appropriate limits of his position more readily than its dramatic possibilities. The habit of mind that invoked constant questioning and probing could, and did, produce reconsideration in the light of changes in other doctrinal areas or in the development of the law that vexes judges most, the law of unintended consequences. But when the dots of more than a thousand opinions are connected, unmistakable patterns emerge. Two stand out in bold clarity: respect for the scope of congressional power and skepticism over the occasional primacy exercised by the judges in addressing social issues through their authority over the constitutional text. Perhaps no Justice in the second half of the twentieth century was more committed to a generous understanding of Article I than Justice White, and none spoke more forcefully defending congressional authority in cases involving separation of powers. He reserved his most eloquent defense of judicial restraint for the occasions when the courts were invited to use their authority to create novel constitutional rights under the rubric of the Due Process Clauses.

Both themes rested on an intellectual foundation committed to the rule of law. He believed in law, both as an authoritative expression of the social will through the legiti-

mate organs of government and as central to the vitality of a free society. He did not view the courts as first among equals in law-making: those directly responsible to the electorate, be they town council or legislature, bore the first burden and the ultimate responsibility for mediating the often conflicting desires of a community. And in an age when cynicism toward government became endemic, Justice White believed in the good faith of police officers, school boards, local officials, juries and administrators charged with a public trust. Public officials, without exception, were accountable under law for transgressions, but they were allowed a practical discretion to perform their civic duties.

Justice White had an enormous impact in a number of areas other than those already mentioned, including jurisdiction, criminal procedure, procedural due process, the First Amendment, labor law, antitrust, and federal pre-emption. He was a team player who incessantly sought opportunities to contribute to the institutions and enterprises to which he attached himself. He esteemed public service as a lawyer's highest calling and warmly encouraged clerks, students, and friends to contribute their talents and energies to the common good. Service was, for him, its own reward. Few public figures in recent memory have cared so little about their popularity or even the judgment of history: he measured himself by his own extraordinary standards, filled each "unforgiving minute with sixty seconds worth of distance run," and was satisfied that ultimate judgment lay beyond temporal realms. Although he guarded his personal privacy energetically, he was not withdrawn: his acts of kindness and compassion, especially in times of personal crises, touched many here and elsewhere but were, by instinct and design, seen by few. And at his heart's deep core, always, was his family—his devoted wife of more than a half-century, Marion, his two children, Charles Byron (Barney) White, and Nancy Lippe, and six grandchildren, who remember him as "Grandpa Justice."

Those among us who knew him have not yet entirely reconciled our loss. We miss his generous sympathy and broad

comprehension of the world, his indefatigable curiosity, his warmth, his wickedly dry sense of humor, and, for some of us lucky enough to know him well, his crushing handshake, which focused his strength, friendship, and intensity into one bracing moment. We are comforted with the thought that death takes a man but does not fully extinguish a life, that he lives on in his family, in his vast legion of close friends, in others whom he touched, and in still others for whom he was a courageous public servant who never flinched when the stakes were the greatest.

On behalf of the Bar of the Supreme Court, it is my privilege to present to the Court the Resolutions adopted today so that the Attorney General may move their inscription on the Court's permanent record.

RESOLUTION

The members of the Bar of the Supreme Court have met today to honor the memory of Byron R. White, Associate Justice of the Supreme Court of the United States, who died April 15, 2002, in Denver, Colorado, and to record their appreciation of the man and of the public servant.

When President John F. Kennedy nominated him to the Court, the President declared that Byron White had "excelled in everything he has attempted—in his academic life, in his military service, in his career before the Bar, and in the federal government." "Few among us deserve such accolades," Justice Lewis F. Powell would later observe, "but President Kennedy did not exaggerate Byron White's achievements."

Byron Raymond White was born June 8, 1917, in Fort Collins, Colorado, but grew up in the small town of Wellington eleven miles away. His father managed a lumber yard. Wellington's economy was dominated by sugar beets, a crop demanding constant attention and back-breaking work, and both White and his older brother, Clayton S. (Sam) White, worked beet fields after school and during the summer from the time they could wield a hoe. Winters were harsh, spring brought strong winds off the front range, and sum-

mers were hot and dry. Character was shaped in the relentless competition between the land and the elements: self-reliance was not an abstraction.

By graduating first in his class from the tiny local high school, like his brother before him, Byron White earned a full-tuition scholarship to the University of Colorado. There he was a star in three sports (football, basketball, baseball), president of the student body, a junior selection to Phi Beta Kappa, and, again like his brother before him, a Rhodes Scholar. His performance during his senior year is still statistically one of the most impressive in the history of intercollegiate football, capped by All-America honors and brilliant play in the second Cotton Bowl. So great was the press interest in the young scholar-athlete that the New York Basketball Writers" Association created the first National Invitational Basketball Tournament largely as a showcase for White and his teammates. White delayed his matriculation at Oxford to accept the highest salary ever offered to a player in the National Football League. Following the 1938 season, he spent two terms at Oxford studying law, but he returned home when World War II broke out in September 1939. He spent a year at Yale Law School, won the Cullen Prize for the highest grades in his first year, then took a leave of absence in each of the two succeeding fall terms to continue to play professional football, which financed his legal education, helped support the medical education of his older brother, and provided a retirement nest egg for his parents.

With the onset of World War II, White tried to enlist in the Marine Corps with the objective of becoming a fighter pilot, but he failed the colorblindness test and had to settle for Naval intelligence. He served with distinction, especially on Admiral Arleigh M. Burke's staff, and was awarded a Bronze Star. He provided intelligence analysis that was critical to the success of the Battle of Leyte Gulf in 1944, and Burke later wrote that White's performance when the *U. S. S. Bunker Hill* was burning at sea represented the epitome of courage, physical strength, and selflessness in a

crisis. After the war, White returned to Yale, where he graduated first in his class and proceeded to a clerkship with Chief Justice Fred M. Vinson during October Term 1946. The Term included a number of watershed cases [1] that would serve, in ways he could not then imagine, as a precursor to future duty when he became the first former clerk to be appointed to the Court.

When the clerkship ended, White faced the choice of where to practice law. Many of his fellow clerks stayed in Washington, but the pull of home and family was too strong, and he returned to Colorado to practice in Denver. His marriage to Marion Lloyd Stearns, daughter of the President of the University of Colorado, on June 15, 1946, meant that all of his extended family were within a 50-mile radius of Denver, as were a wealth of friends and the favored pastimes of his youth, especially fly-fishing and hiking in the foothills. For more than a decade, White enjoyed a widely varied practice ranging from real estate, corporate work, antitrust, and labor law to tax and litigation, including complex antitrust cases and simple one-day trials. He represented large businesses, such as Boettcher & Company, the Denver National Bank, and the Ideal Cement Company, as well as small companies and individuals. He also devoted enormous amounts of time to community service, including the Social Science Foundation at Denver University, Boy Scouts of America, the Urban League, the Denver Welfare Council, the YMCA, the Denver and Colorado Bar Associations, and the Denver Chamber of Commerce, and to numerous charities, principally the United Fund, Camp Chief Ouray for Children, the Rhodes Trust, and Rose Memorial Hospital. A registered Democrat, he declined constant invitations to stand for public office and confined his political work to the grass-roots

[1] *Adamson* v. *California*, 332 U. S. 46 (1947); *SEC* v. *Chenery Corp.*, 332 U. S. 194 (1947); *Harris* v. *United States*, 331 U. S. 145 (1947); *United States* v. *Mine Workers*, 330 U. S. 258 (1947); *Public Workers* v. *Mitchell*, 330 U. S. 75 (1947); *Everson* v. *Board of Ed. of Ewing*, 330 U. S. 1 (1947); *Hickman* v. *Taylor*, 329 U. S. 495 (1947); *Louisiana ex rel. Francis* v. *Resweber*, 329 U. S. 459 (1947); *Ballard* v. *United States*, 329 U. S. 187 (1946).

level. He once confided to a friend that he thought he could get elected to office, "Once." Too committed to his convictions, often too stubborn to compromise, and too disinclined to accommodate the press, he knew he was better placed behind the scenes than capitalizing on his early fame.

When Senator John F. Kennedy decided in 1959 to seek the Democratic nomination for President, his staff solicited White to manage the campaign in Colorado. The Senator was not well known in the West and his voting record on agricultural and reclamation issues did not endear him to those whose livelihoods depended on generous federal policies governing crop prices and water. White, who had known Kennedy first in England when Kennedy's father was Minister to the Court of St. James and then later when both were PT officers in the South Pacific, accepted the challenge and helped Kennedy make a respectable showing in the state party convention. At the national convention in Los Angeles, White became close to Robert F. Kennedy. When the Senator secured the nomination, White was named national chair of Citizens for Kennedy-Johnson. As a practical matter, the position provided Robert Kennedy with the daily opportunity to consult White for advice on campaign tactics and strategy as well as the welter of personnel judgments required by a national campaign.

After Senator Kennedy was elected, White was named Deputy Attorney General. His first task was to recruit the Assistant Attorneys General who would be the front-line officers in the Department of Justice. When White finished the task, Alexander Bickel said that "It was the most brilliantly staffed department we had seen in a long, long time" and that the quality of personnel bespoke a "vision of public service that would have done anyone proud." White also exercised unprecedented independence from Senatorial prerogative in approving United States Attorneys, and once they were in office he monitored their major cases more closely than any of his predecessors had. In addition to making staffing decisions, he was responsible for supervising the vetting of more than one hundred judges nominated dur-

ing the administration's first year. He received national attention during the Freedom Riders Crisis in May of 1961, when he organized and directed an *ad hoc* contingent of heroic federal officers to protect Dr. Martin Luther King and his supporters who faced life-threatening hostility to their protests against racial segregation.

When Justice Charles Evans Whittaker retired a year later, Byron White became President Kennedy's first appointment to the Supreme Court on April 3, 1962. White served for more than 31 years; only eight Justices have held longer tenures. He served with 20 Justices, including three Chief Justices. During his career he wrote 1,275 opinions: 495 opinions of the Court, 249 concurring opinions, and 572 dissents, including 218 dissenting from denials of petitions for certiorari. Imposing as they are, numbers are hardly the measure of the man, nor does the remarkable curriculum vitae capture either his character or his contribution to the Nation.

Those of us who argued before him, representing all shades of opinion at the Bar, respected his impeccable preparation and acute interrogations. We realized that oral argument was not simply a tribute that tradition paid to due process but, at least for him, a means for clarifying his understanding of the case in all of its ramifications. Many of us feared his questions far more than the arguments of our adversaries. He quickly could call on his deep experience at the Bar and on the Bench to focus an argument or to expose an artful diversion. He cut to the heart of a case, but also sharply identified the consequences of a theory that was more convenient than durable. Charles Fried, who served as Solicitor General from 1985 to 1989, has written, "It is not possible to have seen Justice White in the courtroom, to have argued before him, without getting a sense of a strong intelligence. He knew the case. He had worked out the intricacies . . . . He delighted in asking just the question that displayed a weakness the advocate was trying to skate over, or perhaps had not even noticed. 'Skewer' is the word that comes to mind."

Lawyers who refused to come face to face with what he viewed to be the pivotal issue in a case could be met with a withering stare or abrupt dismissal. Yet his questioning was never cruel or punitive. He expected the best presentation from the best advocates, and he manifested compassion for those who had been propelled by their cases from run-of-the-mine practice in local courts to the unfamiliar terrain of the highest Court in the country. Some of us in this room recall the young advocate in her first, perhaps only, appearance here in which she nervously read a prepared argument. Interrupted from the Bench with the comment that the Court had a "rule which frowned on reading oral arguments," Justice White gently intervened with the reassuring observation that the "Solicitor General does it all the time."

Justice Powell acknowledged what could appear to be impatience in Justice White's demeanor on the bench: "If he did not like a lawyer's argument, he often would swivel his chair around and would appear to lose interest in the argument. His recollection of detail, however, always made clear that he had been attentive, as he would remember specifics that other Justices overlooked." Those of us who have seen the back of Justice White's chair can take some comfort in that revelation, and it points to a substantial contribution that the Justice made to the institution that we would not otherwise know. As THE CHIEF JUSTICE has borne witness: "Those of us who daily served with him likely have a greater appreciation for his contributions than can be obtained by simply reading his opinions or tallying his votes in cases decided during his tenure. Given the force of his powerful intellect, his breadth of experience, and his institutional memory, Justice White consistently played a major role in the Court's discussion of cases at its weekly conferences. His comments there reflected not only his meticulous preparation and rigorous understanding of the Court precedent bearing on the question, but also pithily expressed his sense of the practical effect of a given decision."

Whatever his influence in the conference room, it is by his opinions that he inevitably is most widely known and will be

most remembered. The corpus of his work does not represent the exegesis of a theory or the creation of a jurisprudential monument. In the words of THE CHIEF JUSTICE, there is "no Byron R. White School of Jurisprudence." At his confirmation hearings, when he was asked to define the constitutional role of the Supreme Court, he replied simply: "To decide cases." For some, the response was a cryptic truism, but to those who watched and read his work over three decades, the statement was a credo. From beginning to end, he saw the appropriate limits of his position more readily than its dramatic possibilities. He knew well that particular historical contingencies had placed him on the Court and that the institution was bigger than he. "We are a very small number for the freight we carry," he was fond of saying. His job, as he saw it, was to resolve disputes: to read the briefs, to question lawyers rigorously, to find the flaws in the general statements about the law, and to see, as far as humanly possible, the consequences of each decision and its supporting rationales. "My guess," Charles Fried has written, "is that he came closer than most justices to trying to make sense out of each case, one at a time." Justice White's keen intelligence was largely focused on predicting, skeptically, the consequences for other applications of the rule, and the real-world effects of a Supreme Court judgment.

The habit of mind that invoked constant questioning and probing could, and did, produce reconsideration in the light of changes in other doctrinal areas or in the development of the law that vexes judges most, the law of unintended consequences. Although no Member of the Court during his tenure was more committed to the doctrine of *stare decisis*, even with respect to decisions with which he initially disagreed—sometimes vehemently—Justice White never felt boxed into a precedential corner, even by his own opinions. "Doctrinal consistency just did not weigh heavily with him if it led to a conclusion that did not make sense," Charles Fried has written. "With no other justice would you get so little mileage from quoting his own words back to him."

When the dots of more than a thousand opinions are connected, patterns, remarkably free of ideological shading, unmistakably emerge. Two themes stand out in bold clarity: respect for the scope of Congressional power and skepticism over judicial creation of novel constitutional rights. Perhaps no Justice in the second half of the twentieth century was more committed to a generous understanding of Article I than Justice White. Whether construing Congress's power under the Commerce Clause or measuring the scope of remedial power under the post-Civil War amendments to the Constitution, Justice White acknowledged what he viewed to be the necessary latitude owed to Congress to exercise power under a "constitution intended to endure for ages to come, and consequently adapted to the various crises of human affairs."[2] Late in his career, he wrote that "The Constitution is not a deed setting forth the precise metes and bounds of its subject matter; rather, it is a document announcing fundamental principles in value-laden terms that leave ample scope for the exercise of normative judgment by those charged with interpreting and applying it."[3] The lesson, in his view, was one not only for the courts but also for the other branches of government enjoying constitutional power and obligations.

Justice White's views achieved their most powerful and passionate expression in the constitutional domain of separation of powers. When Congress attempted to develop new mechanisms for controlling administrative agencies that it had created, Justice White objected strenuously when the Court was unable to square the innovations with the metes and bounds of Article I.[4] He argued powerfully in the

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[2] *McCulloch* v. *Maryland*, 4 Wheat. 316, 415 (1819).

[3] *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 789 (1986) (White, J., dissenting).

[4] *INS* v. *Chadha*, 462 U. S. 919, 967–974 (1983) (White, J., dissenting). See also *Buckley* v. *Valeo*, 424 U. S. 1, 266 (1976) (White, J., concurring in part and dissenting in part); *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 94 (1982) (White, J., dissenting); *Bowsher* v. *Synar*, 478 U. S. 714, 759 (1986) (White, J., dissenting).

Northern Pipeline case that "at this point in the history of constitutional law" the Court should not have "look[ed] only to the constitutional text" to determine Congress' power "to create adjudicative institutions designed to carry out federal policy."[5] A year later, he defended the legislative veto as an "indispensable political invention that . . . assures the accountability of independent regulatory agencies, and preserves Congress' power over lawmaking."[6] In these and other cases, he emphasized that the constitutional text could not be understood intelligently without regard to its own historical development and to a practical appreciation of the machinery of government created and developed under its authority. Whether based in the Necessary and Proper Clause or in the expansive view of congressional capacity recognized from the earliest days of the nation, new schemes of governing were no less legitimate or constitutionally inappropriate to Justice White than the mechanisms that had been bitterly contested but ultimately ratified under the New Deal. Justice White took a capacious view of the Supreme Court's jurisdiction over state court decisions, and he was the leading authority on the scope of the Voting Rights Act, to which he applied a broad reading in service of access by minorities to the electoral process. Where Congress spoke clearly and within the canonical scope of its historic powers, his opinions provided muscular support for upholding Congress' actions.

"Judges have an exaggerated view of their role in our polity," Justice White has been quoted as saying. That is not to say that he was reluctant to exercise what he viewed to be his responsibility or that he doubted the capacity of courts to develop doctrine interstitially, as Justice Oliver Wendell Holmes, Jr., famously said.[7] But Justice White was dubious at best when the courts were invited to create novel constitutional rights under the rubric of the Due Process Clauses.

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[5] 458 U. S., at 94.

[6] 462 U. S., at 972–973.

[7] *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 221 (1917) (Holmes, J., dissenting).

He did not subscribe to a formula packaged as "a living constitution," "original intent," "plain meaning," or some other catechism: "[The liberty guaranteed by the Due Process Clause of the Fourteenth Amendment] is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary imposition and purposeless restraints."[8] The continuum was not open-ended, however, and was restrained in his view by the constitutional architecture that places primacy in democratically accountable bodies and correspondingly assigns a subsidiary role to courts: "That the Court has ample precedent for the creation of new constitutional rights should not lead it to repeat that process at will. The Judiciary, including this Court, is the most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or even the design of the Constitution . . . . [T]he Court should be extremely reluctant to breathe still further substantive content into the Due Process Clause so as to strike down legislation adopted by a State or city to promote its welfare. Whenever the judiciary does so, it unavoidably pre-empts for itself another part of the governance of the country without express constitutional authority."[9]

Justice White's conception of his role was almost intuitive, bred in the bone rather than created or fully asserted. He believed in law, both as an authoritative expression of the social will through the legitimate organs of government and as central to the vitality of a free society. Unlike many in his era, he did not view the courts as first among equals in law-making: those directly responsible to the electorate, be they town councils or legislatures, bore the first burden and

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[8] *Moore* v. *East Cleveland*, 431 U. S. 494, 542–543 (1977) (White, J., dissenting), quoting *Poe* v. *Ullman*, 367 U. S. 497, 543 (1961) (Harlan, J., dissenting).

[9] 431 U. S., at 544.

the ultimate responsibility for mediating the often conflicting desires of a community. Accordingly, the first obligation of courts was to facilitate those judgments and not to question them as a matter of habit, sentiment, or impulse. And in an age when cynicism toward government became endemic, Justice White believed in the good faith of police officers, school boards, local officials, juries, and administrators charged with a public trust. "To be sure," as Kate Stith-Cabranes has written, "the assumption was rebuttable; the confidence could be broken. But he never expected (or demanded) perfection, for he well understood that neither human beings nor any institutions they create can be flawless." Public officials, without exception, were accountable under law for transgressions, but they were allowed a practical discretion to perform their civic duties.

Now is neither the place nor the time for a comprehensive catalog or assessment of Justice White's specific contributions to the various fields that fall within the Supreme Court's jurisdiction. Suffice to say that he had a profound impact in a number of areas other than those already mentioned, including jurisdiction, criminal procedure, procedural due process, the First Amendment, labor law, antitrust, and federal pre-emption. From his earliest days on the Court, he also made himself expert in fields that were alien to his colleagues or with which they enjoyed little direct experience, such as water rights, Native American sovereignty, and boundary disputes. He was, in private life and in public service, a team player who incessantly sought opportunities to contribute to the institutions and enterprises to which he attached himself. He esteemed public service as a lawyer's highest calling and warmly encouraged clerks, students, and friends to contribute their talents and energies to the common good.

When he announced his retirement March 19, 1993, effective at the end of Term, he was in many respects at the height of his powers and enjoying good health. He could have continued to serve for several more years. When suggestions were made that he might be planning to stay on the

Court long enough to establish the record as the longest-sitting Justice, many of us suspected that his decision to retire might be accelerated so that no hint of vanity could cloud his continued service. Justice White was committed to both the integrity and the dignity of the Supreme Court and fastidiously avoided what he viewed as even the smallest potential blemish on the institution. Life-long friends marveled, for example, that he declined offers of lifts from airport to fishing camp, for fear that he could later be accused of accepting gratuities from potential litigants, even when the "potential litigants" were fully retired and disengaged from their businesses.

In a statement released on the day Justice White announced his retirement, he said in part: "It has been an interesting and exciting experience to serve on the Court. But after 31 years, Marion and I think that someone else should be permitted to have a like experience." No other Member of the Court had ever mentioned a family member in making a retirement announcement, and the inclusion of Marion White was both deliberate and heartfelt. For a half-century, they were a devoted and energetic partnership, whether raising a family, traveling to circuit conferences and law school moot courts, or fly-fishing in their beloved Rockies. Both were deeply rooted in the rocky soil of the Colorado front range, and they treated both Washington and Denver as home. Neither distance nor time ever separated them from the intimacy of life-long friendships or family ties, especially with their children, Charles Byron (Barney) White and Nancy White Lippe, and six grandchildren, who remember him as "Grandpa Justice." Travels to public events were the only glimpses that the public enjoyed of what was otherwise an intensely private couple, aside from the odd sighting at a Kennedy Center or Wolf Trap concert or in the galleries of the art museums, especially the Phillips Collection and the National Gallery, that they both loved so well.

Justice White treasured his private life and guarded it with what to some was breathtaking verve. As a young

man, he had been catapulted uncomfortably into the public eye primarily because of his athletic prowess. That experience, plus innate modesty and shyness, made him allergic to the transparent celebrity that became the norm for public figures during his times in government. Few public figures in recent memory have cared so little about their popularity or even the judgment of history. Service, for him, was its own reward. Justice White remained secure in the values that were forged early in life on the lonely high plains and confirmed as a young professional: He measured himself by his own extraordinary standards, filled each "unforgiving minute with sixty seconds worth of distance run," and was satisfied that ultimate judgment lay beyond temporal realms. To those who were fortunate enough to penetrate the wall of separation between public and private, he was, in the words of someone who knew him for most of his life, "remarkably tender and instinctively generous but neither wished to acknowledge it or have it recognized." No account of the man is complete without acknowledging the countless acts of kindness and quiet compassion that touched so many, especially during times of personal crises, but were, by instinct and design, seen by so few.

We are assembled not to compromise a jealously guarded privacy but to celebrate a life dedicated to public service and the highest standards of integrity and performance. Those of us who knew him have not yet entirely reconciled our loss. We miss his generous sympathy and broad comprehension of the world, his indefatigable curiosity, his warmth, his wickedly dry sense of humor, and, for some of us lucky enough to know him well, his crushing handshake, which focused his strength, friendship, and intensity into one bracing moment. We are comforted with the thought that death takes a man but does not fully extinguish a life, that he lives on in his family, in his vast legion of close friends, in others whom he touched, and in everyone for whom he was a courageous public servant who never flinched when the stakes were the greatest.

WHEREFORE, IT IS RESOLVED, that we, the Bar of the Supreme Court of the United States, express our deep sense of loss upon the death of Justice Byron R. White, that we acknowledge our professional debt to him for his decades of extraordinary public service, and that we gratefully acknowledge his contributions to our profession, to the law, to the Court and to the Nation; it is further

RESOLVED, that the Chairmen of our Committee on Resolutions be directed to present these Resolutions to the Court with the prayer that they be embodied in its permanent records.

THE CHIEF JUSTICE said:

Thank you General Olson. The Court recognizes the Attorney General of the United States.

Attorney General Ashcroft addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

The Bar of the Court met today to honor the memory of Byron R. White, Associate Justice of the Supreme Court from 1962 to 1993.

Byron White exemplified what President Kennedy described as the "new generation of Americans" called to public service in the 1960s—a generation "born in this century, tempered by war, disciplined by a hard and bitter peace, proud of our ancient heritage."[10]

The son of parents who had not graduated from high school, Byron White grew up in the small town of Wellington, Colorado, where, as he put it, "we were all quite poor, although we didn't necessarily feel poor." He learned early the value of hard work, discipline, and sacrifice, toiling in the

[10] *Public Papers of the Presidents of the United States: John F. Kennedy: Containing the Public Messages, Speeches, and Statements of the President Jan. 20 to Dec. 31, 1961* 1 (1962).

sugar beet fields from the time he could wield a hoe, and earning the grades to qualify for a full academic scholarship to the University of Colorado. There, he excelled as a scholar, athlete, and leader. Upon graduation, he faced the choice of studying at Oxford as a Rhodes Scholar or playing in the National Football League. He found a way to do both.

At the outset of World War II, Byron White interrupted his studies at Yale Law School to join the United States Navy. He served with distinction in Naval intelligence in the Pacific, displaying courage, strength, and selflessness under fire, and earning a Bronze Star.

Byron White returned from the War to complete his legal education and to marry Marion Stearns, who would become his lifelong companion and confidante, as well as the mother of their children, Barney and Nancy.

Byron White originally came to this Court in September 1946 as a law clerk to Chief Justice Vinson. He was the first law clerk who would later return as a Justice.

After that clerkship year, Byron and Marion White went home to their beloved Colorado. For a decade and a half, he engaged in the private practice of law, gaining the broad legal experience and honing the good judgment that would inform his future work.

In 1961, President Kennedy called Byron White back to Washington to become Deputy Attorney General, the number two position in the Justice Department. The first year of the Kennedy Administration, like the first year of the current Administration, presented unanticipated challenges. Among them was the effort of the Freedom Riders to integrate public buses and terminals in the South—an effort that was met with widespread violence and the threat of violence. Deputy Attorney General White served as the Administration's point man on the scene, directing the activities of several hundred federal marshals dispatched to restore order.

In the spring of 1962, after only fourteen months at the Justice Department, Byron White was selected for another

post: Associate Justice of this Court. At his confirmation hearing, he explained his view of the role of the judiciary in our democratic system. "It is clear under the Constitution," he said, "that legislative power is not vested in the Supreme Court. It is vested in the Congress; and I feel the major instrument for changing the laws of this country is the Congress." [11]

Those words reflected a philosophy of government that would guide Justice White throughout his three decades on the bench. He had considerable faith in the ability of government—especially the National Government—to address the social and economic problems of the day. He believed, however, that doing so was principally the responsibility of the elected branches, not the courts.

Justice White advocated an expansive understanding of Congress's powers under Article I, not only to provide a national response to emerging concerns such as racial discrimination and environmental pollution,[12] but also to adjust the mechanisms of governance itself.[13] He perceived that "the wisdom of the Framers was to anticipate that the Nation would grow and new problems of governance would require different solutions." [14] He thus understood the Constitution to provide the National Government with "the flexibility to respond to contemporary needs." [15]

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[11] Dennis J. Hutchinson, *The Man Who Once Was Whizzer White: A Portrait of Justice Byron R. White* 331 (1998).

[12] See, *e. g., Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U. S. 264 (1981); *Perez* v. *United States,* 402 U. S. 146 (1971); *Katzenbach* v. *McClung,* 379 U. S. 294 (1964); *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U. S. 241 (1964).

[13] See, *e. g., Bowsher* v. *Synar,* 478 U. S. 714, 759–776 (1986) (White, J., dissenting); *INS* v. *Chadha,* 462 U. S. 919, 978 (1983) (White, J., dissenting); *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.,* 458 U. S. 50, 92–94, 117–118 (1982) (White, J., dissenting); *Palmore* v. *United States,* 411 U. S. 389, 408–410 (1973) (White, J.).

[14] *INS* v. *Chadha,* 462 U. S., at 978 (White, J., dissenting).

[15] *Ibid.*

At the same time, Justice White cautioned against the Court's recognition of new private rights and new public obligations as a matter of constitutional law. "The Judiciary," he observed, "is the most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or even the design of the Constitution."[16] "Whenever the Judiciary does so," he added, "it unavoidably pre-empts for itself another part of the governance of the country without express constitutional authority."[17]

In such circumstances, Justice White believed that the resolution of sensitive social issues generally should be left, for reasons of both constitutional design and institutional competence, "with the people and to the political processes the people have devised to govern their affairs."[18] Indeed, he pointed out in his first dissenting opinion that the courts "cannot match either the States or Congress in expert understanding" of such issues.[19] As one knowledgeable observer has written, "[p]erhaps no one who has ever sat on the Court has been more consistently aware that he was one participant in a large scheme for governing 250 million people, and that others—in Congress, in the executive branch, in state and local governments, on school boards, in police departments, and in important positions in the private sector—must act and decide as well."[20]

Justice White coupled his confidence in democratic institutions with his insistence that all citizens be afforded the opportunity to participate fully and effectively in the democratic process. He joined opinions establishing the "one

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[16] *Moore* v. *East Cleveland*, 431 U. S. 494, 544 (1977) (White, J., dissenting); see *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 787 (1986) (White, J., dissenting).

[17] *Moore*, 431 U. S., at 544 (White, J., dissenting).

[18] *Doe* v. *Bolton*, 410 U. S. 179, 222 (1973) (White, J., dissenting).

[19] *Robinson* v. *California*, 370 U. S. 660, 689 (1962) (White, J., dissenting).

[20] Lance Liebman, *A Tribute to Justice Byron R. White*, 107 Harv. L. Rev. 13, 14 (1993).

person-one vote" principle with respect to legislative apportionment,[21] and he wrote opinions extending that principle to units of local government.[22]

He urged an expansive application of the Voting Rights Act in order to provide minorities with equality of opportunity to share in the political life of the Nation.[23]

Justice White influenced the development of civil-rights law in other respects as well. He was the author of the Court's landmark opinion in *Washington* v. *Davis*, which established discriminatory intent, not mere effect, as the standard for Fourteenth Amendment violations.[24] In applying that standard, however, he made clear that such intent may be discerned in a variety of ways, including by the impact of the challenged action on a minority group.[25] In addition, even where the claim of discrimination was made by persons not in a protected class such as race, he insisted that the distinctions drawn by a law be, in fact, based on reason.[26]

Justice White wrote frequently, both for the Court and in dissent, in the field of criminal procedure. He cautioned against rigid constitutional rules that could unduly impede the search for truth in the criminal justice system,[27] and urged that considerations of "reasonableness" and "good faith" guide the application of the Fourth Amendment. He

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[21] See, *e. g.*, *Reynolds* v. *Sims*, 377 U. S. 533 (1964); see also *White* v. *Weiser*, 412 U. S. 783 (1973) (White, J.).

[22] See *Avery* v. *Midland County*, 390 U. S. 474 (1968) (White, J.); see also *Board of Estimate of City of New York* v. *Morris*, 489 U. S. 688 (1989) (White, J.).

[23] See, *e. g.*, *Shaw* v. *Reno*, 509 U. S. 630, 658–664 (1993) (White, J., dissenting); *Port Arthur* v. *United States*, 459 U. S. 159 (1982) (White, J.); *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S. 144 (1977) (plurality opinion of White, J.).

[24] 426 U. S. 229 (1976).

[25] See, *e. g.*, *Rogers* v. *Lodge*, 458 U. S. 613 (1982) (White, J.).

[26] See, *e. g.*, *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432 (1985) (White, J.); *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 63–70 (1973) (White, J., dissenting).

[27] See, *e. g.*, *Miranda* v. *Arizona*, 384 U. S. 436, 526 (1966) (White, J., dissenting); *Massiah* v. *United States*, 377 U. S. 201, 207 (1964) (White, J., dissenting).

wrote the Court's opinion in *United States* v. *Leon*, which declined to apply the exclusionary rule to evidence obtained by law-enforcement officers in good-faith reliance on a search warrant that was ultimately found not to be supported by probable cause.[28]

Justice White made many other contributions to the law during his tenure on the Court, including in the areas of federal jurisdiction, the First Amendment, and the application of the federal labor, securities, and antitrust laws. But his contributions to the Nation, to the Court, and to the law extend beyond the pages of the United States Reports. Those contributions include the personal modesty of a man who, as President Kennedy put it, "excelled in everything he . . . attempted"; they include the standards of integrity, intellectual rigor, and hard work to which he held himself and others; and they include the commitment to public service that he continues, by his example, to instill in those who knew him and the many others who strive to emulate him.

MR. CHIEF JUSTICE, on behalf of the lawyers of this Nation and, in particular, of the Bar of this Court, I respectfully request that the Resolutions presented to you in honor and celebration of the memory of Justice Byron R. White be accepted by the Court, and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.

THE CHIEF JUSTICE said:

Thank you, Attorney General Ashcroft, and thank you, General Olson, for your presentations in memory of our late colleague and friend, Justice Byron R. White.

We also extend to Co-Chairmen Lance Liebman and Dennis J. Hutchinson and the members of the Committee on Resolutions, Chairman Robert Barnett and members of the Arrangements Committee, and Larry L. Simms, Chairman of today's meeting of the Bar, our appreciation for the Resolu-

[28] 468 U. S. 897 (1984).

tions you have read today. Your motion that they be made part of the permanent record of the Court is granted.

Byron White was nominated to the Court by President Kennedy on April 3, 1962, and was confirmed by the Senate eight days later. He was the 93rd Justice to serve on this Court and the first to have served as a Supreme Court law clerk.

During his 31 years as an Associate Justice, he wrote more than 450 majority opinions for the Court. I cannot in these brief remarks describe the breadth of important decisions written by Byron White, but looking at some of his opinions on the First Amendment's guarantee of freedom of speech and of the press gives you an idea of his legacy. In 1969, he wrote the majority decision in *Red Lion Broadcasting Co.*, holding that the FCC regulations implementing the "fairness doctrine" did not violate the First Amendment. In *Branzburg* v. *Hayes*, decided in 1972, he wrote the opinion holding that the First Amendment did not afford journalists a testimonial privilege against appearing before a grand jury to answer questions relevant to criminal investigations. And in 1979, he wrote for the Court in *Herbert* v. *Lando* that the First Amendment did not bar the plaintiff in an action for defamation from inquiring into the editorial process and the publisher's state of mind to prove actual malice. Three years later, in *New York* v. *Ferber*, he wrote the opinion for the Court holding that child pornography—even though it is not obscene—is not entitled to First Amendment protection. From these you will see that, as Members of the Court go, he was not moved to rapture by the mere mention of the words "First Amendment." I obviously mean no disparagement by this comment, since I voted with him in each of the three cases I mentioned in which I was a Member of the Court.

Of course, reviewing his opinions does not convey the measure of Byron White's contributions to the Court and the law. Suffice it to say that he was a tremendously influential Member of this Court during the entire period of his lengthy service on it. Those of us who served with him have the

best understanding of his contributions to the work of the Court.

He was always a major contributor to the Court's discussion of the argued cases at its weekly conference, a discussion which is absolutely essential to the writing of the opinion of the Court in the case. His observations during those discussions reflected not only an understanding of the Court's previous decisions that bore on the question, but pithily expressed his view as to what the practical effect of a particular decision would be.

Justice White was a rare combination of brilliant scholar and gifted athlete. He was an able colleague and a good friend. He came as close as any of us to meriting Matthew Arnold's encomium: he "saw life steadily and he saw it whole."

TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the United States Code are to the 2000 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. The opinion reported on page 1501 *et seq.* is that written in chambers by an individual Justice.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2002

FORD MOTOR CO. ET AL. *v.* MCCAULEY ET AL.

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

No. 01–896. Argued October 7, 2002—Decided October 15, 2002

Certiorari dismissed. Reported below: 264 F. 3d 952.

Seth P. Waxman argued the cause for petitioners. With him on the briefs were *Walter E. Dellinger*, *John H. Beisner*, *Brian P. Brooks*, *Jonathan D. Hacker*, *Christopher R. Lipsett*, and *Bruce M. Berman.*

Steve W. Berman argued the cause for respondents. With him on the brief were *Roger W. Kirby*, *James G. Lewis*, and *Russell J. Drake.**

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*Briefs of *amici curiae* urging reversal were filed for the United States by *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Clement*, *Barbara McDowell*, *Barbara C. Biddle*, and *Thomas M. Bondy;* for the Chamber of Commerce of the United States of America by *Evan M. Tager*, *David M. Gossett*, and *Robin S. Conrad;* for the Business Roundtable by *Bruce E. Clark;* for the National Association of Manufacturers by *Carter G. Phillips*, *Gene C. Schaerr*, *Paul J. Zidlicky*, *Michael S. Lee*, *Jan S. Amundson*, and *Quentin Riegel;* for the Pharmaceutical Research and Manufacturers of America by *David Klingsberg*, *Thomas A. Smart*, and *Mark S. Popofsky;* for the Product Liability Advisory Council by *Theodore J. Boutrous, Jr.;* and for State

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

It is so ordered.

Farm Mutual Automobile Insurance Co. by *Sheila L. Birnbaum*, *Douglas W. Dunham*, and *Ellen P. Quackenbos*.

Briefs of *amici curiae* urging affirmance were filed for the Association of Trial Lawyers of America by *Jeffrey Robert White* and *Laura C. Tharney;* and for Trial Lawyers for Public Justice by *Roger L. Mandel*, *Marc R. Stanley*, *Mark A. Chavez*, *Arthur Bryant*, and *Michael Quirk*.

Syllabus

EARLY, WARDEN, ET AL. *v.* PACKER

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

No. 01–1765. Decided November 4, 2002

A California jury convicted respondent of, *inter alia*, murder and attempted murder. On direct appeal, the State Court of Appeal rejected his claim that the trial judge coerced his deadlocked jury into continuing deliberations. The Federal District Court dismissed respondent's subsequent federal habeas petition but granted a certificate of appealability on the question whether the state trial judge violated his Fourteenth Amendment rights by coercing the jury into rendering a verdict. The Ninth Circuit reversed on that ground and instructed the District Court to grant the writ.

Held: The Ninth Circuit's decision exceeds the limits imposed on federal habeas review by 28 U. S. C. § 2254(d), which forecloses habeas relief on any claim adjudicated on the merits in state-court proceedings unless the adjudication of the claim resulted in a decision that (1) was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, or (2) was based on an unreasonable determination of the facts in light of the evidence presented in the state-court proceedings. The Ninth Circuit erred in believing that a state court's "failure to cite" controlling Supreme Court precedent renders its decision "contrary to" clearly established federal law. Awareness of this Court's cases is not even required, so long as neither the reasoning nor the result of the state-court decision contradicts them. The Ninth Circuit also erred in charging that the Court of Appeal did not apply the totality-of-the-circumstances test required by *Lowenfield* v. *Phelps*, 484 U. S. 231. Finally, the Ninth Circuit erred in finding our holdings in *Jenkins* v. *United States*, 380 U. S. 445 *(per curiam)*, and *United States* v. *United States Gypsum Co.*, 438 U. S. 422, which were based on the Court's supervisory power over the federal courts and not on constitutional grounds, applicable to state-court proceedings. Because the Ninth Circuit erroneously found that the State Court of Appeal's decision was contrary to clearly established Supreme Court law, and because it is at least reasonable to conclude that there was no jury coercion here, the State Court of Appeal's determination to that effect must stand.

Certiorari granted; 291 F. 3d 569, reversed.

PER CURIAM.

The United States Court of Appeals for the Ninth Circuit granted habeas relief to respondent William Packer after concluding that the state trial judge coerced the jury's verdict. *Packer* v. *Hill*, 291 F. 3d 569 (2002). Because this decision exceeds the limits imposed on federal habeas review by 28 U. S. C. § 2254(d), we grant the petition for certiorari and reverse.

I

A California jury convicted respondent of one count of second-degree murder, one count of attempted murder, two counts of attempted robbery, two counts of assault with a deadly weapon, and one count of assault with a firearm. It acquitted him on 10 other counts.

The path to the jury's guilty verdicts on the murder and attempted-murder charges was not an easy one. After 28 hours of deliberation, and after the jury had returned sealed verdict forms on all the other charges, juror Eve Radcliff sent a note to the judge requesting to be dismissed from the jury due to "'health problems.'" 291 F. 3d, at 573. The judge then met alone with Radcliff, who explained that "'because of the seriousness of the charges, I can't make snap decisions. . . . I was beginning to feel a little burned out.'" *Ibid.* The judge asked Radcliff if she could "'hold out just a little bit longer,'" and when Radcliff agreed the judge replied: "'I really appreciate it. Otherwise, they have to start deliberations all over again with another person.'" *Ibid.* (emphasis deleted).

The next day, the foreman sent the judge a note stating that "'we can no longer deliberate,'" that "'Eve Radcliff, does not appear to be able to understand the rules as given by you,'" that "'nearly all my fellow jurors questio[n] her ability to understand the rules and her ability to reason,'" and that continuing will result in a "'hung jury . . . based on . . . one person's inability to reason or desire to be unreasonable.'" *Ibid.* The judge called the jury into the court-

room, and, in the presence of the attorneys and the defendant, read the note aloud. The judge asked the foreman whether the jury was deliberating. The foreman replied that the jurors were "'just having the same conversation over the same issue time and time again.'" *Id.*, at 574. The judge made the following statement to the jury:

> "'The juror has a right to do that, as you all know. They have a right to disagree with everybody else. But they do not have a right to not deliberate. They must deliberate and follow the rules and laws as I state it to them.'" *Ibid.*

The judge then asked the foreman what the latest vote count was, but told him not to reveal which side had which number of votes. The foreman indicated that the last vote count had been 11 to 1. After the foreman indicated that further deliberations would be helpful, the judge gave the following instruction to the jury:

> "'What you do is—like I think what the instructions were—you apply the facts to the law and you arrive at a decision. The law is right there, and I think elements of the law was *[sic]* given to you in those instructions. They do this or not do this? Was it proven beyond a reasonable doubt? This element, this element, this element? If they did and you find unanimously they did that, you must follow the law and find them either guilty or not guilty of that charge.'" *Ibid.* (emphasis deleted).

At this point, defense counsel objected on the ground that the judge was improperly "'instructing the jury . . . as to their manner of deliberation.'" *Id.*, at 574–575. The judge overruled the objection and continued his instruction as follows:

> "'Ladies and Gentlemen, the only thing I'm going to tell you right now is; once again, I told you, you'll look up in the instructions paraphrasing it, I think I'm using

> the correct words: you're the sole judges of the facts. You determine the facts. You then apply the law to those facts as I state it to you, and you must accept and follow the law. You can't make up your own law. You must accept and follow the law as I state it to you.'" *Id.*, at 575.

The judge then excused the jury for the day.

After a day off, deliberations resumed on a Friday. Once again, Radcliff sent the judge a note asking to be dismissed from the jury. This time she complained about "'feeling[s] of distrust and disrespect from the other jurors,'" and said that "'I have reached a point of anger, and I don't believe I can be objective.'" *Ibid.* The judge again met with Radcliff in his chambers, outside the presence of attorneys, and asked her if she was continuing to deliberate. Radcliff responded that she was "trying," but not to the satisfaction of the others. *Id.*, at 576. The judge thanked her and returned her to the jury room. Then the judge met briefly with the foreman, who assured him that Radcliff was indeed continuing to deliberate. The jury then resumed its deliberations. The following Tuesday, the jury returned a guilty verdict on the attempted-murder count, and the next morning a guilty verdict on the second-degree murder charge.

Respondent appealed his conviction to the Court of Appeal for the State of California, Second Appellate District, arguing that the comments to Radcliff and to the jury were coercive and denied him his due process right to a fair and impartial jury. California law, unlike federal law, prohibits the giving of a so-called *Allen* v. *United States*, 164 U. S. 492 (1896), charge to a deadlocked jury—that is, a charge that specifically urges the minority jurors to give weight to the majority's views. *People* v. *Gainer*, 19 Cal. 3d 835, 852, 566 P. 2d 997, 1006 (1977), held that no instruction may be given which either "(1) encourages jurors to consider the numerical division or preponderance of opinion of the jury in forming

or reexamining their views on the issues before them; or (2) states or implies that if the jury fails to agree the case will necessarily be retried."

The state appellate court, applying *Gainer*, rejected respondent's claim. "[T]here is nothing improper," it said, "in urging the jury to consider the matter further with the view to reaching an agreement[,] as long as the language used does not coerce a particular type of verdict. Accordingly, the comments made and not made by the court to the jury did not coerce a particular verdict or deny Packer any constitutional rights." App. to Pet. for Cert. H–15 to H–16 (citations omitted). The court rejected respondent's remaining challenges to his conviction, and the State Supreme Court declined review.

Respondent sought a writ of habeas corpus from the United States District Court for the Central District of California. That court dismissed the petition, but granted a certificate of appealability on the question whether the state trial judge violated respondent's Fourteenth Amendment rights by coercing the jury into rendering a verdict on the attempted-murder and second-degree murder counts. The Court of Appeals for the Ninth Circuit reversed on that ground, and instructed the District Court to grant the writ on the murder convictions. California's Attorney General has petitioned for certiorari.

II

When a habeas petitioner's claim has been adjudicated on the merits in state-court proceedings, 28 U. S. C. § 2254(d) forecloses relief unless the state court's adjudication of the claim:

> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

> "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

The jury-coercion claim in respondent's habeas petition is the same claim rejected on the merits in his direct appeal to the state appellate court, and the Ninth Circuit correctly recognized that § 2254(d) was therefore applicable. It held that respondent had established that the decision of the Court of Appeal was contrary to established federal law for two, and possibly three, reasons. We think none of them correct.

First, the Ninth Circuit observed that the state court "failed to cite . . . any federal law, much less the controlling Supreme Court precedents." 291 F. 3d, at 578. If this meant to suggest that such citation was required, it was in error. A state-court decision is "contrary to" our clearly established precedents if it "applies a rule that contradicts the governing law set forth in our cases" or if it "confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." *Williams* v. *Taylor*, 529 U. S. 362, 405–406 (2000). Avoiding these pitfalls does not require citation of our cases—indeed, it does not even require *awareness* of our cases, so long as neither the reasoning nor the result of the state-court decision contradicts them. The Ninth Circuit's disapproval of the Court of Appeal's failure to cite this Court's cases is especially puzzling since the state court cited instead decisions from the California Supreme Court that impose even *greater* restrictions for the avoidance of potentially coercive jury instructions. Compare *People* v. *Gainer*, *supra*, at 852, 566 P. 2d, at 1006, with *Allen* v. *United States*, *supra*, at 501.

Second, the Ninth Circuit charged that the Court of Appeal "failed to apply the totality of the circumstances test as required by *Lowenfield* [v. *Phelps*, 484 U. S. 231 (1988)]." That was so, the Ninth Circuit concluded, because it "simply mentioned three particular incidents in its analysis," "failed

to consider" other "critical facts," and "failed to consider the cumulative impact" of all the significant facts, one of which it "[did] not even mention in its analysis." 291 F. 3d, at 578–579, and n. 10. With regard to the last point: The significant fact the Ninth Circuit said was not mentioned—that the judge sent the jury back to its deliberations after learning that it was split 11 to 1—was in fact succinctly described. See *id.*, at 579, n. 10. The Court of Appeal focused its analysis upon "three particular incidents" for the entirely acceptable reason that (as the court said) those incidents constituted "[t]he essence of Packer's complaints" regarding juror coercion. App. to Pet. for Cert. H–15. The opinion set forth many facts and circumstances beyond those three incidents, including the two "critical facts" that the Ninth Circuit said it "failed to consider," 291 F. 3d, at 579, n. 10—the judge's knowledge that Radcliff was the sole dissenting juror prior to his instructing the jury to keep deliberating, App. to Pet. for Cert. H–14, and the fact that the foreman's note, which mentioned Radcliff by name, was read in court, *ibid.* The contention that the California court "failed to consider" facts and circumstances that it had taken the trouble to recite strains credulity. The Ninth Circuit may be of the view that the Court of Appeal did not give certain facts and circumstances adequate weight (and hence adequate discussion); but to say that it did not *consider* them is an exaggeration. There is, moreover, nothing to support the Ninth Circuit's claim that the Court of Appeal did not consider the "cumulative impact" of all the recorded events. Compliance with *Lowenfield* v. *Phelps*, 484 U. S. 231 (1988), does not demand a formulary statement that the trial court's actions and inactions were noncoercive "individually and cumulatively." It suffices that that was the fair import of the Court of Appeal's opinion.

Third and last, the Ninth Circuit faulted the state appellate court for stating that " 'there is nothing improper in urging the jury to consider [the matter] further with the view

to reaching an agreement as long as the language used does not coerce a particular type of verdict.' " 291 F. 3d, at 579. The Ninth Circuit found this statement to be "contrary to" both *Jenkins* v. *United States*, 380 U. S. 445 (1965) *(per curiam)*, and *United States* v. *United States Gypsum Co.*, 438 U. S. 422 (1978), which it construed to prohibit pressing the jurors to arrive at some verdict, not just " 'a particular type of verdict.' " 291 F. 3d, at 579. Neither *Jenkins* nor *Gypsum Co.* is relevant to the § 2254(d)(1) determination, since neither case sets forth a rule applicable to state-court proceedings. *Jenkins* and *Gypsum Co.* reversed convictions based on jury instructions given in *federal* prosecutions, and neither opinion purported to interpret any provision of the Constitution. That alone would be enough to defeat a claim that their application to state-court proceedings is "clearly established." *Lowenfield* v. *Phelps*, *supra*, at 239, n. 2 (citation omitted), however, removed any lingering doubt regarding these cases' application to state convictions when it stated: "[O]ur ruling in *Jenkins* v. *United States* was based on our supervisory power over the federal courts, and not on constitutional grounds. The *Jenkins* Court cited no provision of the Constitution, but rather relied upon other cases involving the exercise of supervisory powers." (The same was true of *Gypsum Co.*) *Jenkins* and *Gypsum Co.* are off the table as far as § 2254(d) is concerned, and the Ninth Circuit erred by relying on those nonconstitutional decisions.

Having determined that the Court of Appeal "failed to apply" clearly established Supreme Court law, 291 F. 3d, at 579 (a phrase which the opinion repeatedly and erroneously substitutes for the more demanding requirement of § 2254(d)(1): that the decision be "contrary to" clearly established Supreme Court law), the Ninth Circuit then proceeded to address the question "whether [the Court of Appeal's] decision constituted error and if so whether the error had a substantial or injurious effect on the verdict." *Ibid.* But that inquiry would have been proper only if the Ninth Circuit

had first found (pursuant to the correct standard) that the California court's decision was "contrary to" clearly established Supreme Court law—which it did not and could not. By mistakenly making the "contrary to" determination and then proceeding to a simple "error" inquiry, the Ninth Circuit evaded § 2254(d)'s requirement that decisions which are not "contrary to" clearly established Supreme Court law can be subjected to habeas relief only if they are not merely erroneous, but "an *unreasonable* application" of clearly established federal law, or based on "an *unreasonable* determination of the facts" (emphasis added). Even if we agreed with the Ninth Circuit majority (Judge Silverman dissented) that there was jury coercion here, it is at least reasonable to conclude that there was not, which means that the state court's determination to that effect must stand.

* * *

The judgment of the Ninth Circuit is reversed.

It is so ordered.

Syllabus

IMMIGRATION AND NATURALIZATION SERVICE *v.* ORLANDO VENTURA

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

No. 02–29. Decided November 4, 2002

The Attorney General is authorized to grant asylum to an alien who demonstrates persecution or a well-founded fear of persecution on account of a "political opinion," and is required to withhold deportation where the alien's "life or freedom would be threatened" for that reason. 8 U. S. C. §§ 1101(a)(42), 1158(a), 1253(h)(1). The Board of Immigration Appeals (BIA) ruled that respondent did not qualify for such protection based on the persecution he faced when he left Guatemala in 1993. The Ninth Circuit reversed and then went on to address the Government's alternative argument that respondent did not qualify for protection regardless of past persecution because conditions in Guatemala had improved to the point where no realistic persecution threat existed. Because the BIA had not considered this argument, both sides asked the court to remand the case to the BIA. The court, however, evaluated the Government's claim itself, holding that the evidence failed to show a sufficient change.

Held: Well-established administrative-law principles required the Ninth Circuit to remand the "changed circumstances" question to the BIA. Where, as here, the law entrusts the agency to make the basic decision in question, a judicial judgment cannot be substituted for an administrative one, *SEC* v. *Chenery Corp.*, 318 U. S. 80, 88, and an appellate court's proper course is to remand to the agency for additional investigation or explanation, *Florida Power & Light Co.* v. *Lorion*, 470 U. S. 729, 744. The BIA has not yet considered the "changed circumstances" issue, and every consideration classically supporting the law's ordinary remand requirement does so here: The agency can bring its expertise to bear upon the matter; can evaluate the evidence; can make an initial determination; and, in doing so, can, through informed discussion and analysis, help a court later determine whether its decision exceeds the leeway that the law provides. Here, the Ninth Circuit seriously disregarded the agency's legally mandated role. It independently created a potentially far-reaching legal precedent about the significance of political change in Guatemala, a highly complex and sensitive matter, without giving the BIA the opportunity to address the matter in the first instance in light of its expertise. The court's reliance on a 1997 State Department re-

port about Guatemala is legally inadequate because the report was ambiguous about changed circumstances, and because remand could lead to the presentation of further evidence of current circumstances, which may well prove enlightening given that five years have elapsed since the report was written.

Certiorari granted; 264 F. 3d 1150, reversed and remanded.

PER CURIAM.

Federal statutes authorize the Attorney General, in his discretion, to grant asylum to an alien who demonstrates "persecution or a well-founded fear of persecution on account of . . . [a] political opinion," and they require the Attorney General to withhold deportation where the alien's "life or freedom would be threatened" for that reason. Immigration and Nationality Act, §§ 101(a)(42)(A), 208(a), 243(h), 66 Stat. 166, as amended, 8 U. S. C. §§ 1101(a)(42), 1158(a), 1253(h)(1) (1994 ed. and Supp. V). The Board of Immigration Appeals (BIA) determined that respondent Fredy Orlando Ventura failed to qualify for this statutory protection because any persecution that he faced when he left Guatemala in 1993 was not *"on account of"* a *"political opinion."* The Court of Appeals for the Ninth Circuit reversed the BIA's holding. 264 F. 3d 1150 (2001) (emphasis added).

The Court of Appeals then went on to consider an alternative argument that the Government had made before the Immigration Judge, namely, that Orlando Ventura failed to qualify for protection regardless of past persecution because conditions in Guatemala had improved to the point where no realistic threat of persecution currently existed. Both sides pointed out to the Ninth Circuit that the Immigration Judge had held that conditions had indeed changed to that point but that the BIA itself had not considered this alternative claim. And both sides asked that the Ninth Circuit remand the case to the BIA so that it might do so. See Brief for Petitioner in No. 99–71004 (CA9), pp. 5, 6, 24; Brief for Respondent in No. 99–71004 (CA9), pp. 8, 9, 23.

The Court of Appeals, however, did not remand the case. Instead, it evaluated the Government's claim itself. And it decided the matter in Orlando Ventura's favor, holding that the evidence in the record failed to show sufficient change. 264 F. 3d, at 1157–1158. The Government, seeking certiorari here, argues that the Court of Appeals exceeded its legal authority when it decided the "changed circumstances" matter on its own. We agree with the Government that the Court of Appeals should have remanded the case to the BIA. And we summarily reverse its decision not to do so.

I

We shall describe the basic proceedings so far. In 1993 Orlando Ventura, a citizen of Guatemala, entered the United States illegally. In 1995 the Attorney General began deportation proceedings. And in 1998 an Immigration Judge considered Orlando Ventura's application for asylum and withholding of deportation, an application based upon a fear and threat of persecution "on account of" a "political opinion." 8 U. S. C. §§ 1101(a)(42)(A), 1253(h) (1994 ed. and Supp. V). Orlando Ventura testified that he had received threats of death or harm unless he joined the guerrilla army, that his family members had close ties to the Guatemalan military, and that, in his view, the guerrillas consequently believed he held inimical political opinions.

The Immigration Judge denied relief. She recognized that Orlando Ventura subjectively believed that the guerrillas' interest in him was politically based. And she credited testimony showing (a) that Orlando Ventura's family had many connections to the military, (b) that he was very close to one cousin, an army lieutenant who had served for almost 12 years, (c) that in 1987 his uncle, a local military commissioner responsible for recruiting, was attacked by people with machetes, and (d) that in 1988 his cousin (a soldier) and the cousin's brother (a civilian) were both shot at and the soldier-cousin killed. Nonetheless, Orlando Ventura had

failed objectively "to demonstrate that the guerillas' interest" in him was "on account of his political opinion." App. to Pet. for Cert. 22a. The Immigration Judge added that "conditions" in Guatemala had changed significantly. Even "if the guerillas" once had had a politically based "interest" in Orlando Ventura, the evidence failed to show that the guerrillas would "continue to have motivation and inclination to persecute him in the future." *Ibid.*

The BIA, considering the matter *de novo*, "agree[d]" with the Immigration Judge that Orlando Ventura "did not meet his burden of establishing that he faces persecution 'on account of' a qualifying ground . . . ." *Id.*, at 15a. The BIA added that it "need not address" the question of "changed country conditions." *Ibid.*

The Court of Appeals, reviewing the BIA's decision, decided that this evidence "*compel[led]* " it to reject the BIA's conclusion. 264 F. 3d, at 1154 (emphasis added); see *INS* v. *Elias-Zacarias*, 502 U. S. 478, 481, n. 1 (1992) ("To reverse the BIA finding we must find that the evidence not only *supports* that conclusion, but *compels* it . . ." (emphasis in original)). It recognized that the BIA had not decided the "changed circumstances" question and that "generally" a court should remand to permit that consideration. 264 F. 3d, at 1157. Cf. *Castillo* v. *INS*, 951 F. 2d 1117, 1120–1121 (CA9 1991) (specifying that the Court of Appeals must review the decision of the BIA, not the underlying decision of the immigration judge). But the Court of Appeals added that it need "not remand . . . when it is clear that we would be compelled to reverse the BIA's decision if the BIA decided the matter against the applicant." 264 F. 3d, at 1157. And it held that the record evidence, namely, a 1997 State Department report about Guatemala, "clearly demonstrates that the presumption of a well-founded fear of future persecution was not rebutted." *Ibid.* Hence, it concluded, "remand . . . is inappropriate." *Ibid.*

The Government challenges the decision not to remand. And it says the matter is important. The "error," it says, is a "recurring error [that] puts the Ninth Circuit in conflict with other courts of appeals, which generally respect the BIA's role as fact-finder by remanding to the BIA in similar situations." Pet. for Cert. 11. See also Pet. for Cert. in *INS* v. *Chen*, O. T. 2002, No. 25, p. 23 (referring to eight other recent decisions from the Court of Appeals for the Ninth Circuit, which, in the Government's view, demonstrate this trend). After examining the record, we find that well-established principles of administrative law did require the Court of Appeals to remand the "changed circumstances" question to the BIA.

II

No one disputes the basic legal principles that govern remand. Within broad limits the law entrusts the agency to make the basic asylum eligibility decision here in question. *E. g.*, 8 U. S. C. § 1158(a); 8 U. S. C. § 1253(h)(1) (1994 ed.); *Elias-Zacarias*, *supra*, at 481; *INS* v. *Aguirre-Aguirre*, 526 U. S. 415 (1999). See also 8 CFR § 3.1 (2002). In such circumstances a "judicial judgment cannot be made to do service for an administrative judgment." *SEC* v. *Chenery Corp.*, 318 U. S. 80, 88 (1943). Nor can an "appellate court . . . intrude upon the domain which Congress has exclusively entrusted to an administrative agency." *Ibid.* A court of appeals "is not generally empowered to conduct a *de novo* inquiry into the matter being reviewed and to reach its own conclusions based on such an inquiry." *Florida Power & Light Co.* v. *Lorion*, 470 U. S. 729, 744 (1985). Rather, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Ibid.* Cf. *SEC* v. *Chenery Corp.*, 332 U. S. 194, 196 (1947) (describing the reasons for remand).

Generally speaking, a court of appeals should remand a case to an agency for decision of a matter that statutes place primarily in agency hands. This principle has obvious im-

portance in the immigration context. The BIA has not yet considered the "changed circumstances" issue. And every consideration that classically supports the law's ordinary remand requirement does so here. The agency can bring its expertise to bear upon the matter; it can evaluate the evidence; it can make an initial determination; and, in doing so, it can, through informed discussion and analysis, help a court later determine whether its decision exceeds the leeway that the law provides.

These basic considerations indicate that the Court of Appeals committed clear error here. It seriously disregarded the agency's legally mandated role. Instead, it independently created potentially far-reaching legal precedent about the significance of political change in Guatemala, a highly complex and sensitive matter. And it did so without giving the BIA the opportunity to address the matter in the first instance in light of its own expertise.

The Court of Appeals rested its conclusion upon its belief that the basic record evidence on the matter—the 1997 State Department report about Guatemala—compelled a finding of insufficiently changed circumstances. But that foundation is legally inadequate for two reasons. First, the State Department report is, at most, ambiguous about the matter. The bulk of the report makes clear that considerable change has occurred. The report says, for example, that in December 1996 the Guatemalan Government and the guerrillas signed a peace agreement, that in March 1996 there was a cease fire, that the guerrillas then disbanded as a fighting force, that "the guerrillas renounced the use of force to achieve political goals," and that "there was [a] marked improvement in the overall human rights situation." Bureau of Democracy, Human Rights and Labor, U. S. Dept. of State, Guatemala-Profile of Asylum Claims & Country Conditions 2–4 (June 1997).

As the Court of Appeals stressed, two parts of the report can be read to the contrary. They say that (1) even "after

the March cease-fire, guerrillas continued to employ death threats" and (2) "the level of crime and violence now seems to be higher than in the recent past." *Id.*, at 3–4. Yet the report itself qualifies these statements. As to the second, the report (as the Court of Appeals noted) says: "*Although* the level of crime and violence now seems to be higher than in the recent past, *the underlying motivation in most asylum cases now appears to stem from common crime and/or personal vengeance*," *i. e.*, not politics. *Id.*, at 4 (emphasis added). And the report (in sections to which the Court of Appeals did not refer) adds that in the context of claims based on political opinion, in "our experience, only party leaders or high-profile activists generally would be vulnerable to such harassment and usually only in their home communities." *Id.*, at 8. This latter phrase "only in their home communities" is particularly important in light of the fact that an individual who can relocate safely within his home country ordinarily cannot qualify for asylum here. See 8 CFR §208.13(b)(1)(i) (2002).

Second, remand could lead to the presentation of further evidence of current circumstances in Guatemala—evidence that may well prove enlightening given the five years that have elapsed since the report was written. See §§3.1, 3.2 (permitting the BIA to reopen the record and to remand to the Immigration Judge as appropriate).

III

We conclude that the Court of Appeals should have applied the ordinary "remand" rule. We grant the Government's petition for certiorari. We reverse the judgment of the Court of Appeals for the Ninth Circuit insofar as it denies remand to the agency. And we remand the case for further proceedings consistent with this opinion.

So ordered.

Syllabus

WOODFORD, WARDEN *v.* VISCIOTTI

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

No. 02–137. Decided November 4, 2002

Respondent killed one person and seriously wounded another during a robbery. A California jury convicted him of murder and sentenced him to death. The State Supreme Court affirmed. In subsequently denying his state habeas corpus petition, that court assumed that respondent's trial counsel provided constitutionally inadequate representation during the trial's penalty phase, but found that it did not prejudice the jury's sentencing decision. The Federal District Court later granted respondent federal habeas relief as to his sentence, finding that he had been denied effective assistance of counsel during the penalty phase. In affirming, the Ninth Circuit ruled that the State Supreme Court's decision ran afoul of 28 U. S. C. § 2254(d) because it was "contrary to" *Strickland* v. *Washington*, 466 U. S. 668, and an "unreasonable application" of this Court's clearly established principles.

Held: The Ninth Circuit's decision exceeds § 2254(d)'s limits on federal habeas review. First, that court erred in holding that the state court applied the wrong standard for evaluating prejudice. Under *Strickland*, a defendant need only establish a "reasonable probability" that, but for counsel's unprofessional errors, the result of his sentencing proceeding would have been different. *Id.*, at 694. *Strickland* specifically rejected a higher standard: that the defendant must prove it more likely than not that the outcome would have been altered. *Id.*, at 693. The Ninth Circuit erred in finding that the State Supreme Court held respondent to this higher standard because it used "probable" without the modifier "reasonably" in three places in its opinion. The Ninth Circuit's readiness to attribute error is inconsistent with the presumption that state courts know and follow the law, and is incompatible with § 2254(d)'s highly deferential standard for evaluating state-court rulings. The Ninth Circuit also erred in finding that the state-court decision involved an unreasonable application of this Court's clearly established precedents. There is no support for the conclusion that the state court failed to take into account the totality of the available mitigating evidence and to consider the prejudicial impact of counsel's actions. The state court found that, because the aggravating factors were so severe, respondent suffered no prejudice from trial counsel's (assumed) inadequacy. Whether or not a federal habeas court would have reached that same

conclusion, habeas relief is not permissible under § 2254(d) unless the state court's decision is objectively unreasonable.

Certiorari granted; 288 F. 3d 1097, reversed.

PER CURIAM.

The United States Court of Appeals for the Ninth Circuit affirmed the grant of habeas relief to respondent John Visciotti after concluding that he had been prejudiced by ineffective assistance of counsel at trial. 288 F. 3d 1097 (2002). Because this decision exceeds the limits imposed on federal habeas review by 28 U. S. C. § 2254(d), we reverse.

I

Respondent and a co-worker, Brian Hefner, devised a plan to rob two fellow employees, Timothy Dykstra and Michael Wolbert, on November 8, 1982, their payday. They invited the pair to join them at a party. As the four were driving to that supposed destination in Wolbert's car, respondent asked Wolbert to stop in a remote area so that he could relieve himself. When all four men had left the car, respondent pulled a gun, demanded the victims' wallets (which turned out to be almost empty), and got Wolbert to tell him where in the car the cash was hidden. After Hefner had retrieved the cash, respondent walked over to the seated Dykstra and killed him with a shot in the chest from a distance of three or four feet. Respondent then raised the gun in both hands and shot Wolbert three times, in the torso and left shoulder, and finally, from a distance of about two feet, in the left eye. Respondent and Hefner fled the scene in Wolbert's car. Wolbert miraculously survived to testify against them.

Respondent was convicted by a California jury of first-degree murder, attempted murder, and armed robbery, with a special-circumstance finding that the murder was committed during the commission of a robbery. The same jury determined that respondent should suffer death. The California Supreme Court affirmed the conviction and sentence. *People* v. *Visciotti*, 2 Cal. 4th 1, 825 P. 2d 388 (1992).

Respondent filed a petition for a writ of habeas corpus in the California Supreme Court, alleging ineffective assistance of counsel. That court appointed a referee to hold an evidentiary hearing and make findings of fact—after which, and after briefing on the merits, it denied the petition in a lengthy opinion. *In re Visciotti*, 14 Cal. 4th 325, 926 P. 2d 987 (1996). The California Supreme Court assumed that respondent's trial counsel provided constitutionally inadequate representation during the penalty phase, but concluded that this did not prejudice the jury's sentencing decision. *Id.*, at 353, 356–357, 926 P. 2d, at 1004, 1006.

Respondent filed a federal habeas petition in the United States District Court for the Central District of California. That court determined that respondent had been denied effective assistance of counsel during the penalty phase of his trial, and granted the habeas petition as to his sentence. The State appealed to the Court of Appeals for the Ninth Circuit.

The Court of Appeals correctly observed that a federal habeas application can only be granted if it meets the requirements of 28 U. S. C. § 2254(d), which provides:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

The Court of Appeals found that the California Supreme Court decision ran afoul of both the "contrary to" and the

"unreasonable application" conditions of § 2254(d)(1), and affirmed the District Court's grant of relief. See 288 F. 3d, at 1118–1119. The State of California petitioned for a writ of certiorari, which we now grant along with respondent's motion for leave to proceed *in forma pauperis.*

II

A

We consider first the Ninth Circuit's holding that the California Supreme Court's decision was "contrary to" our decision in *Strickland* v. *Washington*, 466 U. S. 668 (1984). *Strickland* held that to prove prejudice the defendant must establish a "*reasonable probability* that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *id.*, at 694 (emphasis added); it specifically rejected the proposition that the defendant had to prove it more likely than not that the outcome would have been altered, *id.*, at 693. The Court of Appeals read the State Supreme Court opinion in this case as applying the latter test—as requiring respondent to prove, by a preponderance of the evidence, that the result of the sentencing proceedings would have been different. See 288 F. 3d, at 1108–1109. That is, in our view, a mischaracterization of the state-court opinion, which expressed and applied the proper standard for evaluating prejudice.

The California Supreme Court began its analysis of the prejudice inquiry by setting forth the "reasonable probability" criterion, with a citation of the relevant passage in *Strickland;* and it proceeded to state that "[t]he question we must answer is whether there is a reasonable probability that, but for counsel's errors and omissions, the sentencing authority would have found that the balance of aggravating and mitigating factors did not warrant imposition of the death penalty," again with a citation of *Strickland. In re Visciotti,* 14 Cal. 4th, at 352, 926 P. 2d, at 1003 (citing *Strickland*, *supra*, at 696). Twice, the court framed its inquiry as

turning on whether there was a "reasonable probability" that the sentencing jury would have reached a more favorable penalty-phase verdict. 14 Cal. 4th, at 352, 353, 926 P. 2d, at 1003, 1004. The following passage, moreover, was central to the California Supreme Court's analysis:

> "In *In re Fields*, . . . we addressed the process by which the court assesses prejudice at the penalty phase of a capital trial at which counsel was, allegedly, incompetent in failing to present mitigating evidence: 'What kind of evidentiary showing will undermine confidence in the outcome of a penalty trial that has resulted in a death verdict? *Strickland* . . . and the cases it cites offer some guidance. *United States* v. *Agurs* . . . , the first case cited by *Strickland*, spoke of evidence which raised a reasonable doubt, although not necessarily of such character as to create a substantial likelihood of acquittal. . . . *United States* v. *Valenzuela-Bernal* . . . , the second case cited by *Strickland*, referred to evidence which is "material and favorable . . . in ways not merely cumulative. . . ."'" *Id.*, at 353–354, 926 P. 2d, at 1004.

"Undermin[ing] confidence in the outcome" is exactly *Strickland*'s description of what is meant by the "reasonable probability" standard. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, *supra*, at 694.

Despite all these citations of, and quotations from, *Strickland*, the Ninth Circuit concluded that the California Supreme Court had held respondent to a standard of proof higher than what that case prescribes for one reason: in three places (there was in fact a fourth) the opinion used the term "probable" without the modifier "reasonably." 288 F. 3d, at 1108–1109, and n. 11. This was error. The California Supreme Court's opinion painstakingly describes the *Strickland* standard. Its occasional shorthand reference to that

standard by use of the term "probable" without the modifier may perhaps be imprecise, but if so it can no more be considered a repudiation of the standard than can this Court's own occasional indulgence in the same imprecision. See *Mickens* v. *Taylor*, 535 U. S. 162, 166 (2002) ("probable effect upon the outcome"); *Williams* v. *Taylor*, 529 U. S. 362, 393 (2000) ("probably affected the outcome").

The Court of Appeals made no effort to reconcile the state court's use of the term "probable" with its use, elsewhere, of *Strickland*'s term "reasonably probable," nor did it even acknowledge, much less discuss, the California Supreme Court's proper framing of the question as whether the evidence "undermines confidence" in the outcome of the sentencing proceeding. This readiness to attribute error is inconsistent with the presumption that state courts know and follow the law. See, *e. g.*, *Parker* v. *Dugger*, 498 U. S. 308, 314–316 (1991); *Walton* v. *Arizona*, 497 U. S. 639, 653 (1990), overruled on other grounds, *Ring* v. *Arizona*, 536 U. S. 584 (2002); *LaVallee* v. *Delle Rose*, 410 U. S. 690, 694–695 (1973) *(per curiam)*. It is also incompatible with § 2254(d)'s "highly deferential standard for evaluating state-court rulings," *Lindh* v. *Murphy*, 521 U. S. 320, 333, n. 7 (1997), which demands that state-court decisions be given the benefit of the doubt.

B

The Court of Appeals also held that, regardless of whether the California Supreme Court applied the proper standard for determining prejudice under *Strickland*, its decision involved an unreasonable application of our clearly established precedents. 288 F. 3d, at 1118. Specifically, the Ninth Circuit concluded that the determination that Visciotti suffered no prejudice as a result of his trial counsel's deficiencies was "objectively unreasonable." *Ibid.* Under § 2254(d)'s "unreasonable application" clause, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the state-court decision applied

Strickland incorrectly. See *Bell* v. *Cone*, 535 U. S. 685, 698–699 (2002); *Williams*, *supra*, at 411. Rather, it is the habeas applicant's burden to show that the state court applied *Strickland* to the facts of his case in an objectively unreasonable manner. An "*unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams*, *supra*, at 410; see *Bell*, *supra*, at 694. The Ninth Circuit did not observe this distinction, but ultimately substituted its own judgment for that of the state court, in contravention of 28 U. S. C. § 2254(d).

The Ninth Circuit based its conclusion of "objective unreasonableness" upon its perception (1) that the California Supreme Court failed to "take into account" the totality of the available mitigating evidence, and "to consider" the prejudicial impact of certain of counsel's actions, and (2) that the "aggravating factors were not overwhelming." 288 F. 3d, at 1118. There is no support for the first of these contentions. All of the mitigating evidence, and all of counsel's prejudicial actions, that the Ninth Circuit specifically referred to as having been left out of account or consideration were in fact described in the California Supreme Court's lengthy and careful opinion. The Court of Appeals asserted that the California Supreme Court "completely ignored the mitigating effect of Visciotti's brain damage," and failed to consider the prejudicial effect of counsel's "multiple concessions during closing argument." *Ibid.* However, the California Supreme Court specifically considered the fact that an expert "had testified at the guilt phase that [Visciotti] had a minimal brain injury of a type associated with impulse disorder and learning disorder." *In re Visciotti*, 14 Cal. 4th, at 354, 926 P. 2d, at 1004. And it noted that under the trial court's instructions, this and other evidence that had been introduced "might have been considered mitigating at the penalty phase," despite trial counsel's concessions during closing argument. *Ibid.*

The California Supreme Court then focused on counsel's failure to introduce mitigating evidence about respondent's background, including expert testimony that could have been presented about his "growing up in a dysfunctional family in which he suffered continual psychological abuse." *Id.*, at 355, 926 P. 2d, at 1005. This discussion referred back to a lengthy, detailed discussion about the undiscovered mitigating evidence that trial counsel might have presented during the penalty phase. See *id.*, at 341–345, 926 P. 2d, at 996–998. The California Supreme Court concluded that despite the failure to present evidence of respondent's "troubled family background," *id.*, at 355, 926 P. 2d, at 1005, which included his being "berated," being "markedly lacking in self-esteem and depressed," having been "born with club feet," having "feelings of inadequacy, incompetence, inferiority," and the like, moving "20 times" while he was growing up, and possibly suffering a "seizure disorder," *id.*, at 341–343, 926 P. 2d, at 996–998, the aggravating factors were overwhelming. In the state court's judgment, the circumstances of the crime (a cold-blooded execution-style killing of one victim and attempted execution-style killing of another, both during the course of a preplanned armed robbery) coupled with the aggravating evidence of prior offenses (the knifing of one man, and the stabbing of a pregnant woman as she lay in bed trying to protect her unborn baby) was devastating. See *id.*, at 355, 926 P. 2d, at 1005; see also *People* v. *Visciotti*, 2 Cal. 4th, at 33–34, 825 P. 2d, at 402. The California Supreme Court found these aggravating factors to be so severe that it concluded respondent suffered no prejudice from trial counsel's (assumed) inadequacy. *In re Visciotti*, *supra*, at 355, 926 P. 2d, at 1005.

The Court of Appeals disagreed with this assessment, suggesting that the fact that the jury deliberated for a full day and requested additional guidance on the meaning of "moral justification" and "extreme duress" meant that the "aggravating factors were not overwhelming." 288 F. 3d, at 1118.

Perhaps so. However, "under § 2254(d)(1), it is not enough to convince a federal habeas court that, in its independent judgment, the state-court decision applied *Strickland* incorrectly." *Bell*, 535 U. S., at 699. The federal habeas scheme leaves primary responsibility with the state courts for these judgments, and authorizes federal-court intervention only when a state-court decision is objectively unreasonable. It is not that here. Whether or not we would reach the same conclusion as the California Supreme Court, "we think at the very least that the state court's contrary assessment was not 'unreasonable.'" *Id.*, at 701. Habeas relief is therefore not permissible under § 2254(d).

* * *

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

Reversed.

Syllabus

SYNGENTA CROP PROTECTION, INC., ET AL. *v.* HENSON

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

No. 01–757. Argued October 15, 2002—Decided November 5, 2002

Respondent Henson's Louisiana state-court tort suit against petitioners was stayed when respondent intervened in the similar *Price* suit, underway in the Federal District Court for the Southern District of Alabama. Although the ensuing settlement in *Price* stipulated that the *Henson* action be dismissed with prejudice, the Louisiana state court allowed *Henson* to proceed. Petitioners removed *Henson* to the Middle District of Louisiana, relying upon the general removal statute, 28 U. S. C. § 1441(a), and asserting federal jurisdiction under the All Writs Act, § 1651, and the supplemental jurisdiction statute, § 1367. The case was transferred to the Southern District of Alabama, which, *inter alia*, dismissed *Henson* as barred by the *Price* settlement. As relevant here, the Eleventh Circuit vacated, reasoning that § 1441 by its terms authorizes removal only of actions over which the district courts have original jurisdiction, and that, because the All Writs Act authorizes writs in aid of the courts' respective jurisdictions without providing any federal subject-matter jurisdiction in its own right, that Act could not support *Henson*'s removal from state to federal court.

Held: The All Writs Act does not furnish removal jurisdiction. That Act, alone or in combination with the existence of ancillary enforcement jurisdiction, is not a substitute for § 1441's requirement that a federal court have original jurisdiction over an action in order for it to be removed from a state court. Pp. 31–34.

(a) The All Writs Act—which provides, in § 1651(a), that "courts established by . . . Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions"—does not authorize removal of the *Henson* action. In arguing that the Act supports removal, respondent relies upon *United States* v. *New York Telephone Co.*, 434 U. S. 159, 172, and *Pennsylvania Bureau of Correction* v. *United States Marshals Service*, 474 U. S. 34, 41. The latter case, however, made clear that "[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Id.*, at 43. Removal is entirely a creature of statute and "a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress." *Great Northern R. Co.* v. *Alexander*, 246

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U. S. 276, 280. Petitioners may not, by resorting to the All Writs Act, avoid complying with statutory requirements for removal. See *Pennsylvania Bureau*, *supra*, at 43. Section 1441(a) provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed." Under those plain terms, in order properly to remove the *Henson* action, petitioners must demonstrate that original subject-matter jurisdiction lies in federal courts. Because the All Writs Act does not confer jurisdiction on the federal courts, however, it cannot confer the original jurisdiction required to support removal under § 1441. Pp. 31–33.

(b) Nor does the All Writs Act authorize the removal of *Henson* when considered in conjunction with the doctrine of ancillary enforcement jurisdiction. Such jurisdiction "may extend to claims having a factual and logical dependence on 'the primary lawsuit.'" *Peacock* v. *Thomas*, 516 U. S. 349, 355. Because a court must have jurisdiction over a case or controversy before it may assert jurisdiction over ancillary claims, *ibid.*, however, ancillary jurisdiction cannot provide the original jurisdiction that petitioners must show to qualify for § 1441 removal. Invoking ancillary jurisdiction, like invoking the All Writs Act, does not dispense with the need to comply with statutory requirements. Pp. 33–34.

261 F. 3d 1065, affirmed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. STEVENS, J., filed a concurring opinion, *post*, p. 35.

Henry B. Alsobrook, Jr., argued the cause for petitioners. With him on the briefs were *Mark C. Surprenant*, *Robert N. Markle*, and *Alan B. Nadel.*

David J. Bederman argued the cause and filed a brief for respondent.*

**Robert N. Weiner* and *Jonathan Harrison* filed a brief for the Product Liability Advisory Council, Inc., as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of Texas by *John Cornyn*, Attorney General of Texas, *Lonny S. Hoffman*, and *Gregory S. Coleman;* for the Association of Trial Lawyers of America by *Jeffrey Robert White;* and for Trial Lawyers for Public Justice by *Adam Samaha*, *Roberta B. Walburn*, *Martha K. Wivell*, and *Arthur H. Bryant.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Hurley Henson filed suit in state court in Iberville Parish, Louisiana, against petitioner Syngenta Crop Protection, Inc. (then known as Ciba-Geigy Corp.) asserting various tort claims related to petitioners' manufacture and sale of a chlordimeform-based insecticide. A similar action, *Price* v. *Ciba-Geigy Corp.*, was already underway in the United States District Court for the Southern District of Alabama. The Louisiana court stayed respondent's action when respondent successfully intervened in the *Price* suit and participated in the ensuing settlement. That settlement included a stipulation that the *Henson* action, "including any and all claims . . . against [petitioners], shall be dismissed, with prejudice," as of the approval date. App. 38a; see also *id.*, at 36a.

Following the approval of the settlement, the Louisiana state court conducted a hearing to determine whether the *Henson* action should be dismissed. Counsel for respondent told the court that the *Price* settlement required dismissal of only some of the claims raised in *Henson.* Although this representation appeared to be contrary to the terms of the settlement agreement, the Louisiana court relied upon it and invited respondent to amend the complaint and proceed with the action.

Counsel for petitioners did not attend the hearing. Upon learning of the state court's action, however, petitioners promptly removed the action to the Middle District of Louisiana, relying on 28 U. S. C. § 1441(a). The notice of removal asserted federal jurisdiction under the All Writs Act, § 1651, and under the supplemental jurisdiction statute, § 1367. The Middle District of Louisiana granted a transfer to the Southern District of Alabama pursuant to § 1404(a), and the Alabama court then dismissed *Henson* as barred by the *Price* settlement and sanctioned respondent's counsel for his misrepresentation to the Louisiana state court.

The Court of Appeals for the Eleventh Circuit affirmed the sanctions but vacated the District Court's order dismissing the *Henson* action. *Henson* v. *Ciba-Geigy Corp.*, 261 F. 3d 1065 (2001). The court reasoned that § 1441 by its terms authorizes removal only of actions over which the district courts have original jurisdiction. But the All Writs Act authorizes writs "in aid of [the courts'] respective jurisdictions" without providing any federal subject-matter jurisdiction in its own right, see, *e. g.*, *Clinton* v. *Goldsmith*, 526 U. S. 529, 534–535 (1999). Therefore, the Court of Appeals concluded, the All Writs Act could not support removal of the *Henson* action from state to federal court.

In so holding, the Court of Appeals recognized that several Circuits have held that the All Writs Act gives a federal court the authority to remove a state-court case in order to prevent the frustration of orders the federal court has previously issued. See, *e. g.*, *Xiong* v. *Minnesota*, 195 F. 3d 424, 426 (CA8 1999); *Bylinski* v. *Allen Park*, 169 F. 3d 1001, 1003 (CA6 1999); *In re Agent Orange Product Liability Litigation*, 996 F. 2d 1425, 1431 (CA2 1993). It noted, however, that other Circuits have agreed with its conclusion that the All Writs Act does not furnish removal jurisdiction. See, *e. g.*, *Hillman* v. *Webley*, 115 F. 3d 1461, 1469 (CA10 1997). We granted certiorari to resolve this controversy, 534 U. S. 1126 (2001), and now affirm.

The All Writs Act, 28 U. S. C. § 1651(a), provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Petitioners advance two arguments in support of their claim that removal of the *Henson* action was proper under the All Writs Act: (1) The All Writs Act authorized removal of the *Henson* action, and (2) the All Writs Act in conjunction with the doctrine of ancillary enforcement jurisdiction authorized the removal. We address these contentions in turn.

First, petitioners, like the courts that have endorsed "All Writs removal," rely upon our statement in *United States* v. *New York Telephone Co.*, 434 U. S. 159, 172 (1977), that the Act authorizes a federal court "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." Petitioners also cite *Pennsylvania Bureau of Correction* v. *United States Marshals Service*, 474 U. S. 34, 41 (1985), for the proposition that the All Writs Act "fill[s] the interstices of federal judicial power when those gaps threate[n] to thwart the otherwise proper exercise of federal courts' jurisdiction." They argue that the Act comes into play here because maintenance of the *Henson* action in state court in Louisiana frustrated the express terms of the *Price* settlement, which required that "any and all claims" in *Henson* be dismissed.

But *Pennsylvania Bureau* made clear that "[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." 474 U. S., at 43. The right of removal is entirely a creature of statute and "a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress." *Great Northern R. Co.* v. *Alexander*, 246 U. S. 276, 280 (1918) (citing *Gold-Washing and Water Co.* v. *Keyes*, 96 U. S. 199, 201 (1878)). These statutory procedures for removal are to be strictly construed. See, *e. g.*, *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U. S. 100, 108–109 (1941) (noting that policy underlying removal statutes "is one calling for the strict construction of such legislation"); *Healy* v. *Ratta*, 292 U. S. 263, 270 (1934) ("Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which the statute has defined"); *Matthews* v. *Rodgers*, 284 U. S. 521, 525 (1932); *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 233–234 (1922). Petitioners may not, by resorting to the All Writs Act, avoid complying with

the statutory requirements for removal. See *Pennsylvania Bureau*, *supra*, at 43 (All Writs Act "does not authorize [federal courts] to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate").

Petitioners' question presented to this Court suggests a variation on this first argument, asking whether the All Writs Act "vests federal district courts with authority to exercise removal jurisdiction *under 28 U. S. C. § 1441*." Pet. for Cert. i (emphasis added). The general removal statute, 28 U. S. C. § 1441, provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending," unless Congress specifically provides otherwise. § 1441(a). Under the plain terms of § 1441(a), in order properly to remove the *Henson* action pursuant to that provision, petitioners must demonstrate that original subject-matter jurisdiction lies in the federal courts. They concede that the All Writs Act "does not, by its specific terms, provide federal courts with an independent grant of jurisdiction." Brief for Petitioners 9; see also *Clinton*, *supra*, at 534–535 (express terms of the All Writs Act confine a court "to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction"). Because the All Writs Act does not confer jurisdiction on the federal courts, it cannot confer the original jurisdiction required to support removal pursuant to § 1441.

Second, petitioners contend that some combination of the All Writs Act and the doctrine of ancillary enforcement jurisdiction support the removal of the *Henson* action. As we explained in *Peacock* v. *Thomas*, 516 U. S. 349, 355 (1996), "[a]ncillary jurisdiction may extend to claims having a factual and logical dependence on 'the primary lawsuit.'" Petitioners emphasize that the Southern District of Alabama re-

tained jurisdiction over the *Price* settlement, thus distinguishing *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375 (1994), in which we found ancillary jurisdiction lacking. They argue that respondent's maintenance of the *Henson* action undermined the *Price* settlement and that, in light of the Alabama court's retained jurisdiction, ancillary enforcement jurisdiction was necessary and appropriate.* But they fail to explain how the Alabama District Court's retention of jurisdiction over the *Price* settlement authorized *removal* of the *Henson* action. Removal is governed by statute, and invocation of ancillary jurisdiction, like invocation of the All Writs Act, does not dispense with the need for compliance with statutory requirements.

Read in light of the question presented in the petition for certiorari, perhaps petitioners' argument is that ancillary jurisdiction authorizes removal under 28 U. S. C. § 1441. As we explained in *Peacock*, however, a "court must have jurisdiction over a case or controversy before it may assert jurisdiction over ancillary claims." 516 U. S., at 355. Ancillary jurisdiction, therefore, cannot provide the original jurisdiction that petitioners must show in order to qualify for removal under § 1441.

Section 1441 requires that a federal court have original jurisdiction over an action in order for it to be removed from a state court. The All Writs Act, alone or in combination with the existence of ancillary jurisdiction in a federal court, is not a substitute for that requirement. Accordingly, the judgment of the Court of Appeals is

Affirmed.

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*Petitioners' assertion that removal was "necessary" is unpersuasive on its own bottom. One in petitioners' position may apply to the court that approved a settlement for an injunction requiring dismissal of a rival action. Petitioners could also have sought a determination from the Louisiana state court that respondent's action was barred by the judgment of the Alabama District Court.

JUSTICE STEVENS, concurring.

As the Court acknowledges, *ante*, at 32, the decisions of the Courts of Appeals that we disapprove today have relied in large part on our decision in *United States* v. *New York Telephone Co.*, 434 U. S. 159 (1977).* For the reasons stated in Part II of my dissenting opinion in that case—reasons that are echoed in the Court's opinion today—I believe that it clearly misconstrued the All Writs Act. *Id.*, at 186–190 (opinion dissenting in part). See also *id.*, at 178 (Stewart, J., concurring in part and dissenting in part). Because the overly expansive interpretation given to the All Writs Act in *New York Telephone* may produce further mischief, I would expressly overrule that misguided decision.

With these observations, I join the Court's opinion.

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*See, *e. g.*, *In re VMS Securities Litigation*, 103 F. 3d 1317, 1323 (CA7 1996); *Sable* v. *General Motors Corp.*, 90 F. 3d 171, 175 (CA6 1996); *In re Agent Orange Product Liability Litigation*, 996 F. 2d 1425, 1431 (CA2 1993). See also Hoffman, Removal Jurisdiction and the All Writs Act, 148 U. Pa. L. Rev. 401, 417 (1999) (noting that nearly all courts that have approved removal pursuant to the All Writs Act have relied on *New York Telephone*).

Indeed, the court below observed that the most powerful argument in favor of petitioners' position is provided by the "broad view of the All Writs Act's purpose" articulated in *New York Telephone*. *Henson* v. *Ciba-Geigy Corp.*, 261 F. 3d 1065, 1070 (CA11 2001).

Syllabus

YELLOW TRANSPORTATION, INC. *v.* MICHIGAN ET AL.

CERTIORARI TO THE SUPREME COURT OF MICHIGAN

No. 01–270. Argued October 7, 2002—Decided November 5, 2002

Prior to 1994, the Interstate Commerce Commission (ICC) allowed States to charge interstate motor carriers operating within their borders annual registration fees of up to $10 per vehicle. As proof of registration, participating States issued stamps that were affixed to a card carried in each vehicle. Under this so-called "bingo card" system, some States entered into "reciprocity agreements" whereby, in exchange for reciprocal treatment, they discounted or waived registration fees for carriers from other States. In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress directed the ICC to replace the "bingo card" regime with a new system, the "Single State Registration System," under which a carrier's annual registration with one State that had participated in the "bingo card" system would be deemed to satisfy the registration requirements of all other such States. ISTEA also capped state registration fees by directing the ICC to "establish a fee system . . . that . . . will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U. S. C. § 11506(c)(2)(B)(iv)(III) (1994 ed.), amended and recodified in § 14504(c)(2)(B)(iv)(III). In its final implementing regulations, the ICC ruled that, under the new system, States could not terminate the reciprocity agreements that were in place under the "bingo card" regime. To allow them to do so, the ICC decided, would be inconsistent with ISTEA's fee-cap provision and with the Act's intent that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced.

Michigan participated in the "bingo card" regime. For the 1990 and 1991 registration years, the Michigan Public Service Commission did not levy a fee for petitioner's trucks that were licensed in Illinois pursuant to its policy not to charge a fee for vehicles registered in other States that did not charge Michigan-based carriers a fee. In 1991, however, the commission announced a change in its policy, effective February 1, 1992, whereby the commission granted reciprocity treatment based on the policies of the State in which a carrier maintained its principal place of business rather than the State in which individual vehicles were licensed. Because Michigan had no reciprocal arrangement with Kansas,

where petitioner was headquartered, the Michigan commission levied a fee of $10 per vehicle for the 1992 registration year on petitioner's entire fleet, with payment due on January 1, 1992. After paying the fees in October 1991 under protest, petitioner brought suit in the Michigan Court of Claims seeking a refund of the fees it paid for its Illinois-licensed vehicles after the Single State Registration System came into effect. It alleged that, because Michigan had not "collected or charged" a 1991 registration fee for those trucks, ISTEA's fee-cap provision prohibits Michigan from levying a fee for them. The court granted petitioner summary judgment, and the Michigan Court of Appeals affirmed. The Michigan Supreme Court reversed, concluding that reciprocity agreements are not relevant in determining what fee a State "charged or collected" as of November 15, 1991. Applying *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, the court determined that the statute unambiguously forbids the ICC's interpretation. Reasoning that the new fee system is based not on the fees collected from one individual company, but on the fee system that the State had in place on November 15, 1991, the court concluded that it must look not at the fees petitioner paid in any given year, but at the *generic fee* Michigan charged or collected from carriers as of November 15, 1991.

Held: The Michigan Supreme Court erred in holding that, under § 14504(c)(2)(B)(iv)(III), only a State's "generic" fee is relevant to determining the fee that was "collected or charged as of November 15, 1991." States may not renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of that date. Because the ICC's interpretation of ISTEA's fee-cap provision is a permissible reading of the statutory language and reasonably resolves ambiguity therein, the ICC's interpretation must receive deference under *Chevron*, *supra*, at 843, and the Michigan Supreme Court erred in declining to enforce it. The fee-cap provision does not foreclose the ICC's determination that fees charged under States' pre-existing reciprocity agreements were, in effect, frozen by the new Single State Registration System. The statutory language "collected or charged" can quite naturally be read to mean fees that a State *actually* collected or charged. The statute can easily be read as the ICC chose, making it unlawful for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991. While the Michigan Supreme Court's reading of the statute might be reasonable, nothing in the statute compels that particular result. The fee-cap provision refers not to a "fee system," but to the "fee . . . collected or charged." Under the ICC's rule, where a State waives its registration fee, its "fee . . . collected or

charged" is zero and must remain zero. To allow States to disavow their reciprocity agreements so as to alter any fee charged or collected as of November 15, 1991, would potentially permit States to increase their revenues substantially under the new system, a result that the ICC quite reasonably believed Congress did not intend. The Court rejects respondents' arguments that Congress intended for each State to set a single, uniform fee; that the ICC could not add a constraint not within the statute's express language; and that the ICC's rule contravenes the fee-cap provision by limiting what a State can charge based on what was collected from or charged to a particular carrier. Pp. 45–48.

464 Mich. 21, 627 N. W. 2d 236, reversed and remanded.

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 an opinion concurring in the judgment, *post*, p. 48.

Charles A. Rothfeld argued the cause for petitioner. With him on the briefs were *Evan M. Tager*, *Robert L. Bronston*, *John W. Bryant*, and *R. Ian Hunter*.

Austin C. Schlick argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Wallace*, *Michael Jay Singer*, *Bruce G. Forrest*, *Kirk K. Van Tine*, *Paul M. Geier*, *Dale C. Andrews*, and *Laura C. Fentonmiller*.

Thomas L. Casey, Solicitor General of Michigan, argued the cause for respondents. With him on the briefs were *Jennifer M. Granholm*, Attorney General, *Susan I. Leffler*, Assistant Solicitor General, and *David A. Voges* and *Henry J. Boynton*, Assistant Attorneys General.*

JUSTICE O'CONNOR delivered the opinion of the Court.

We granted certiorari in this case, 534 U. S. 1112 (2002), to determine whether the Michigan Supreme Court erred in

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**Roy T. Englert, Jr., Sherri Lynn Wolson, Beth L. Law,* and *Robert Digges, Jr.*, filed a brief for the American Trucking Associations, Inc., et al. as *amici curiae* urging reversal.

holding that, under 49 U. S. C. § 14504(c)(2)(B)(iv)(III), only a State's "generic" fee is relevant to determining the fee that was "collected or charged as of November 15, 1991."

I

A

Beginning in 1965, Congress authorized States to require interstate motor carriers operating within their borders to register with the State proof of their Interstate Commerce Commission (ICC) interstate operating permits. Pub. L. 89–170, 79 Stat. 648, 49 U. S. C. § 302(b)(2) (1970 ed.). Congress provided that state registration requirements would not constitute an undue burden on interstate commerce so long as they were consistent with regulations promulgated by the ICC. *Ibid.*

Prior to 1994, the ICC allowed States to charge interstate motor carriers annual registration fees of up to $10 per vehicle. See 49 CFR § 1023.33 (1992). As proof of registration, participating States would issue a stamp for each of the carrier's vehicles. § 1023.32. The stamp was affixed on a "uniform identification cab car[d]" carried in each vehicle, within the square bearing the name of the issuing State. §§ 1023.32(d)–(e). This system came to be known as the "bingo card" system. *Single State Insurance Registration*, 9 I. C. C. 2d 610 (1993).

The "bingo card" regime proved unsatisfactory to many who felt that the administrative burdens it placed on carriers and participating States outweighed the benefits to those States and to the public. H. R. Rep. No. 102–171, pt. I, p. 49 (1991); H. R. Conf. Rep. No. 102–404, pp. 437–438 (1991). In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress therefore directed the ICC to implement a new system to replace the "bingo card" regime.*

*Congress abolished the ICC in 1995 and assigned responsibility for administering the new Single State Registration System to the Secretary of Transportation. See ICC Termination Act of 1995, Pub. L. 104–88,

See Pub. L. 102–240, § 4005, 105 Stat. 1914, 49 U. S. C. § 11506(c) (1994 ed.). Under the new system, called the Single State Registration System, "a motor carrier [would be] required to register annually with only one State," and "such single State registration [would] be deemed to satisfy the registration requirements of all other States." §§ 11506(c)(1)(A) and (C). Thus, one State would—on behalf of all other participating States—register a carrier's vehicles, file and maintain paperwork, and collect and distribute registration fees. § 11506(c)(2)(A). Participation in the Single State Registration System was limited to those States that had elected to participate in the "bingo card" system. § 11506(c)(2)(D).

ISTEA also capped the per-vehicle registration fee that participating States could charge interstate motor carriers. Congress directed the ICC to

> "establish a fee system . . . that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." § 11506(c)(2)(B)(iv).

Congress provided that the charging or collection of any fee not in accordance with the ICC's fee system would "be deemed to be a burden on interstate commerce." § 11506(c)(2)(C).

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§ 101, 109 Stat. 803. The provisions of ISTEA governing the system were amended and recodified. See 49 U. S. C. § 14504(c). The Federal Highway Administration, under the Secretary of Transportation, adopted the ICC regulations that implemented the Single State Registration System, 61 Fed. Reg. 54706, 54707 (1996), and the Federal Motor Carrier Safety Administration now has authority to administer the system, 49 U. S. C. § 113(f)(1).

The ICC issued its final implementing regulations in May 1993 after notice-and-comment proceedings. *Single-State Insurance Registration*, *supra.* The rulemaking gave rise to the central question in this case: whether, under the Single State Registration System, States were free to terminate "reciprocity agreements" that were in place under the "bingo card" regime. *Id.*, at 617–619. Under these agreements, in exchange for reciprocal treatment, some States discounted or waived registration fees for carriers from other States. *Id.*, at 617.

In issuing a set of proposed rules and soliciting further comments, the ICC questioned whether it had the power to require States to preserve pre-existing reciprocity agreements. *Single State Insurance Registration*, No. MC–100 (Sub-No. 6), 1993 WL 17833, *12 (Jan. 22, 1993); see *Single State Insurance Registration—1993 Rules*, 9 I. C. C. 2d 1, 11 (1992). It noted that these agreements were voluntary and mutually beneficial and commented that "as long as no carrier is charged more than [a State's] standard November 15, 1991, fee for all carriers (subject to the $10 limit), the requirements of [ISTEA] are satisfied." 1993 WL 17833, *12.

In its final implementing regulations, however, the ICC concluded, in light of further comments, that its preliminary view on reciprocity agreements was inconsistent with ISTEA's fee-cap provision and with "the intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." *Single State Insurance Registration*, 9 I. C. C. 2d, at 618. The agency therefore determined that States participating in the Single State Registration System "must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991, as required by § 11506(c)(2)(B)(iv)." *Id.*, at 618–619; see also *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Registration*, 9 I. C. C. 2d 1184, 1192, 1194–1195 (1993). The

National Association of Regulatory Utility Commissioners (NARUC) and 18 state regulatory commissions sought review of the ICC's determination and certain provisions of the Single State Registration System regulations. *NARUC* v. *ICC*, 41 F. 3d 721 (1994). The United States Court of Appeals for the District of Columbia concluded that the plain language of the statute supported the ICC's determination that States participating in the new system must consider reciprocity agreements under 49 U. S. C. § 11506(c)(2)(B)(iv). 41 F. 3d, at 729.

B

Prior to the implementation of the Single State Registration System, Michigan had participated in the "bingo card" regime. See App. 5 (Affidavit of Thomas R. Lonergan, Director, Motor Carrier Regulation Division of the Michigan Public Service Commission ¶ 3e) (hereinafter Lonergan Affidavit). The Michigan Legislature had directed the Michigan Public Service Commission to levy an annual registration fee of $10 per vehicle on interstate motor carrier vehicles and simultaneously endowed the commission with authority to "enter into a reciprocal agreement with a state." Mich. Comp. Laws Ann. § 478.7(4) (West 1988). Pursuant to such reciprocal agreements, the commission was empowered to "waive the fee [otherwise] required." *Ibid.*

Petitioner in this case is an interstate trucking company headquartered in Kansas. For calendar years 1990 and 1991, the Michigan Public Service Commission did not levy a fee for petitioner's trucks that were licensed in Illinois pursuant to its policy "not to charge a fee to carriers with vehicles registered in states . . . which did not charge Michigan-based carriers a fee." App. 6 (Lonergan Affidavit ¶ 3i). In 1991, however, the Michigan Public Service Commission announced a change in its reciprocity policy to take effect on February 1, 1992. Under the new policy, the commission granted reciprocity treatment based on the policies of the State in which a carrier maintained its principal place of

business rather than the State in which individual vehicles were licensed. Because Michigan had no reciprocal arrangement with Kansas, the Michigan Public Service Commission sent petitioner a bill in September 1991, levying a fee of $10 per vehicle for the 1992 registration year on petitioner's entire fleet, with payment due on January 1, 1992.

Petitioner paid the fees in October 1991 under protest and later brought suit in the Michigan Court of Claims seeking a refund of the fees it paid for its Illinois-licensed vehicles after the Single State Registration System came into effect. See 49 U. S. C. § 11506(c)(3) (1994 ed.) (setting effective date of January 1, 1994). Petitioner alleged that, because Michigan had not "collected or charged" a fee for the 1991 registration year for trucks licensed in Illinois, ISTEA's fee-cap provision prohibits Michigan from levying a fee on Illinois-licensed trucks.

On cross motions for summary disposition, the Michigan Court of Claims ruled in favor of petitioner. *Yellow Freight System, Inc.* v. *Michigan*, No. 95–15706–CM (Mar. 13, 1996) *(Yellow Freight System I)*. The Court of Claims' holding relied on an ICC declaratory order in which the agency held that ISTEA's fee-cap provision caps fees at the level "collected or charged" for registration year 1991, not those fees levied for registration year 1992 in advance of the statutory cutoff date. *Id.*, at 3–4; see *American Trucking Associations*, *supra*, at 1192, 1195.

The Michigan Court of Appeals affirmed on similar grounds. *Yellow Freight System, Inc.* v. *Michigan*, 231 Mich. App. 194, 585 N. W. 2d 762 (1998) *(Yellow Freight System II)*. The Court of Appeals also rejected Michigan's argument that States need not consider reciprocity agreements in determining the level of fees "charged or collected as of November 15, 1991," noting that the ICC had determined reciprocity agreements must be considered, and that the agency's decision had been upheld in *NARUC* v. *ICC*, *supra*.

Yellow Freight System II, *supra*, at 202–203, 585 N. W. 2d, at 766.

The Michigan Supreme Court reversed. *Yellow Freight System, Inc.* v. *Michigan*, 464 Mich. 21, 627 N. W. 2d 236 (2001) *(Yellow Freight System III)*. The court concluded that "reciprocity agreements are not relevant in determining what fee [a State] 'charged or collected' as of November 15, 1991." *Id.*, at 33, 627 N. W. 2d, at 242. The court expressly rejected the District of Columbia Circuit's contrary conclusion. *Id.*, at 29, 627 N. W. 2d, at 240 (citing *NARUC* v. *ICC*, *supra*). The Court applied *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), but determined that the statute unambiguously forbids the ICC's interpretation. *Yellow Freight System III*, 464 Mich., at 29–31, 627 N. W. 2d, at 240–241. Reasoning that "[t]he new 'fee system' is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991," the court concluded that "[w]e must look not at the fees paid by [petitioner] in any given year, but at the *generic fee* Michigan charged or collected from carriers as of November 15, 1991." *Id.*, at 31, 627 N. W. 2d, at 241 (emphasis added). Two justices dissented, finding ISTEA's fee-cap provision ambiguous, the ICC's construction reasonable, and deference therefore due. *Id.*, at 33–43, 627 N. W. 2d, at 242–247 (opinions of Kelly and Cavanagh, JJ.).

The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U. S. C. § 14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had "canceled its reciprocity agreements with other States in 1989." Brief for United States as *Amicus Curiae* 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991.

II

Neither party disputes that *Chevron*, *supra*, governs the interpretive task at hand. In ISTEA, Congress made an express delegation of authority to the ICC to promulgate standards for implementing the new Single State Registration System. 49 U. S. C. § 11506(c)(1) (1994 ed.). The ICC did so, interpreting ISTEA's fee-cap provision subsequent to a notice-and-comment rulemaking. See *United States* v. *Mead Corp.*, 533 U. S. 218, 229 (2001) ("[A] very good indicator of delegation meriting *Chevron* treatment [is an] express congressional authorizatio[n] to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed"). The Federal Highway Administration adopted the ICC's regulations, see *supra*, at 39, n., and the Single State Registration System is now administered by the Federal Motor Carrier Safety Administration. 49 U. S. C. § 113.

Accordingly, the question before us is whether the text of the statute resolves the issue, or, if not, whether the ICC's interpretation is permissible in light of the deference to be accorded the agency under the statutory scheme. If the statute speaks clearly "to the precise question at issue," we "must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U. S., at 842–843. If the statute is instead "silent or ambiguous with respect to the specific issue," we must sustain the agency's interpretation if it is "based on a permissible construction of the statute." *Id.*, at 843; see *Barnhart* v. *Walton*, 535 U. S. 212, 217–218 (2002).

ISTEA's fee-cap provision does not foreclose the ICC's determination that fees charged under States' pre-existing reciprocity agreements were, in effect, frozen by the new Single State Registration System. The provision requires that the new system "result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U. S. C. § 14504(c)(2)(B)(iv)(III). The language "collected or

charged" can quite naturally be read to mean fees that a State *actually* collected or charged. The statute thus can easily be read as the ICC chose, making it unlawful "for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system." *American Trucking Associations*, 9 I. C. C. 2d, at 1194; see *Single State Insurance Registration*, 9 I. C. C. 2d, at 618–619.

The Michigan Supreme Court held that the language of ISTEA's fee-cap provision compels a different result. Although it acknowledged that ISTEA is silent with respect to reciprocity agreements, the court nonetheless concluded that the fee-cap provision mandates that those agreements have no bearing in the determination of what fee a State "collected or charged" as of November 15, 1991. *Yellow Freight System III*, 464 Mich., at 31, 627 N. W. 2d, at 241. The court reasoned that the Single State Registration System was "based not on the fees collected from one individual company, but on the *fee system* that the state had in place." *Ibid.* (emphasis added). While such a reading might be reasonable, nothing in the statute compels that particular result.

The fee-cap provision refers not to a "fee system," but to the "fee . . . collected or charged." 49 U. S. C. § 14504(c)(2)(B)(iv)(III). Under the ICC's rule, where a State waives its registration fee, its "fee . . . collected or charged" is zero and must remain zero. The ICC's interpretation is a permissible reading of the language of the statute. And, because there is statutory ambiguity and the agency's interpretation is reasonable, its interpretation must receive deference. See *Chevron*, *supra*, at 843.

As commenters to the ICC during the rulemaking pointed out, to allow States to disavow their reciprocity agreements so as to alter any fee charged or collected as of November 15, 1991, would potentially permit States to increase their revenues substantially under the new system, a result that the ICC quite reasonably believed Congress did not intend.

See *Single State Insurance Registration*, 9 I. C. C. 2d, at 618. The ICC concluded that its rule best served the "intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." *Ibid.* The agency considered that allowing States to disavow reciprocity agreements and charge a single, uniform fee might reduce administrative burdens, but expressed concern that carriers' registration costs, and state revenues, would balloon. *Ibid.* (noting that some carriers' fees "assertedly could increase as much as 900%," and that one commenter presented a "worst case scenario" in which "State revenues could increase from $50 million to $200 million").

Respondents argue that Congress intended for each State to set a single, uniform fee. While such a mandate would, indeed, have simplified the new system, it is not compelled by the language of the statute, which instructs the ICC to implement a system under which States charge a fee, not to exceed $10 per vehicle, that is equal to the fee such States "collected or charged as of November 15, 1991."

Respondents also contend that, by freezing the fees charged under reciprocity agreements as part of the fee cap, the ICC added a constraint not within the express language of the statute. The Michigan Supreme Court expressed a similar concern, stating that "[i]t is not for the ICC . . . to insert words into the statute." 464 Mich., at 32, 627 N. W. 2d, at 241–242. It was precisely Congress' command, however, that the ICC promulgate standards to govern the Single State Registration System, 49 U. S. C. § 11506(c) (1994 ed.), and it was thus for that agency to resolve any ambiguities and fill in any holes in the statutory scheme. See *Mead Corp.*, *supra*, at 229; *Chevron*, *supra*, at 843–844. To hold States to the fees they actually collected or charged seems to us a reasonable interpretation of the statute's command that state fees be "equal to the fee, not to exceed $10 per

vehicle, that such State collected or charged as of November 15, 1991." 49 U. S. C. § 14504(c)(2)(B)(iv)(III).

Respondents argue that the ICC's rule contravenes ISTEA's fee-cap provision by limiting what a State can charge based on what was collected from or charged to a particular carrier. Respondents point out that the focus of the provision is on the actions of the State, not the actions of any particular carrier. While we agree that the statute focuses on what States "collected or charged" rather than what particular carriers paid, we do not agree that the ICC's rule focuses the inquiry on the latter. Under the "bingo card" regime, States entered into reciprocity agreements that waived or reduced fees charged to particular categories of vehicles. The ICC's rule does not necessarily cap the aggregate fee paid by any particular carrier; rather, it simply requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991.

Because the ICC's interpretation of ISTEA's fee-cap provision is consistent with the language of the statute and reasonably resolves any ambiguity therein, see *Chevron*, 467 U. S., at 843, the Michigan Supreme Court erred in declining to enforce it.

The judgment is therefore reversed, and the case is remanded to the Michigan Supreme Court for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment.

In my opinion there is no ambiguity in the relevant provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In that Act, Congress delegated to the Interstate Commerce Commission (ICC) the power to prescribe "standards" and "amendments to standards" that would create a "Single State Registration System." 49 U. S. C. § 11506 (1994 ed.). As a part of that delegation, the

ISTEA gave the ICC broad authority to establish a "fee system" that would comply with three conditions, the third of which contained two requirements.[1] The fee for each participating State (1) may not exceed $10 per vehicle and (2) must be equal to the fee that the State "collected or charged as of November 15, 1991." § 11506(c)(2)(B)(iv)(III).

Because Michigan had both collected and charged a $10 fee in 1991—and continued to do so thereafter—the Michigan Public Service Commission did not violate either of those statutory requirements when it changed its method of determining reciprocity with respect to individual carriers.[2] Indeed, the essential features of Michigan's fee system for 1992 were the same as they were in 1991: The amount of the fee that the "State collected or charged" was $10 per vehicle both before and after November 15, 1991; that fee was assessed on exactly the same kinds of vehicles both before and after that date; the State had reciprocal arrangements, providing for either a discount or a waiver of the fee with the same States in 1992 that it did in 1991.

Michigan did, however, violate an additional requirement imposed by the ICC when the State modified its method of determining the home State of out-of-state vehicles. That

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[1] "(B) RECEIPTS; FEE SYSTEM.—Such amended standards—

. . . . . .

"(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991 . . . ." 49 U. S. C. § 11506(c)(2)(B)(iv) (1994 ed.).

[2] As explained by the majority, *ante*, at 42–43, Michigan changed its policy from determining reciprocity with respect to an individual vehicle based on where that vehicle was registered and had obtained a license plate to determining reciprocity based on where the trucking company that owned the individual vehicle maintained its principal place of business.

agency-imposed requirement effectively precluded a State from making a systemic change that would significantly increase its revenues. I think it clear that the statutory delegation of power to the ICC to "establish a fee system" was broad enough to include the power to impose additional requirements to ensure that a State would not impose a "burden on interstate commerce." See §§ 11506(c)(2)(B)(iv), (c)(2)(C). The rulemaking proceeding confirmed the ICC's power to require the States to preserve pre-existing reciprocity agreements to avoid a scenario in which "some States would realize windfalls." *Single State Insurance Registration,* 9 I. C. C. 2d 610, 618 (1993) (responding to comment alleging, among other things, that if reciprocity agreements were discontinued, "State revenues could increase from $50 million to $200 million"); see *ante*, at 41. Although Michigan did not abandon any reciprocity agreement, I think it equally clear that the ICC could prohibit a change in the method of implementing those agreements that would significantly increase a State's revenues, and therefore threaten to burden commerce.[3]

Thus, I concur in the Court's judgment because the statute authorized the ICC to decide that the States' pre-existing reciprocity agreements should, in effect, be "frozen." I do not, however, believe that the statute mandated that result. Nor do I believe that the additional constraint imposed by the ICC should be upheld as a permissible construction of subsection (c)(2)(B)(iv)(III). Rather, in my opinion, it was a permissible exercise of the broad authority vested in the ICC to "establish a fee system" that would not create "a burden on interstate commerce." See §§ 11506(c)(2)(B)(iv), (c)(2)(C). It is on this basis that I concur in the judgment of the Court.

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[3] Not every change in how reciprocity is determined would lead to an increase in a State's revenues. Indeed, it may be that a State's revenues would decrease after making such a change. I am satisfied, however, that the potential for an increase in these circumstances is a sufficient threat to burden commerce within the meaning of the statute.

Syllabus

SPRIETSMA, ADMINISTRATOR OF THE ESTATE OF SPRIETSMA, DECEASED *v.* MERCURY MARINE, A DIVISION OF BRUNSWICK CORP.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 01–706. Argued October 15, 2002—Decided December 3, 2002

Petitioner's wife was killed in a boating accident when she was struck by the propeller of an outboard motor manufactured by respondent, Mercury Marine, a division of Brunswick Corporation (Brunswick). In his subsequent common-law tort action in Illinois state court, petitioner claimed that Brunswick's motor was unreasonably dangerous because, among other things, it was not protected by a propeller guard. The trial court dismissed the complaint, and the intermediate court affirmed, finding the action expressly pre-empted by the Federal Boat Safety Act of 1971 (FBSA or Act). The Illinois Supreme Court rejected that rationale, but affirmed on implied pre-emption grounds.

Held: The FBSA does not pre-empt state common-law claims such as petitioner's. Pp. 56–70.

(a) The FBSA was enacted to improve boating safety, to authorize the establishment of national construction and performance standards for boats and associated equipment, and to encourage greater uniformity of boating laws and regulations as among the States and the Federal Government. The Secretary of Transportation has delegated the authority to promulgate regulations establishing minimum safety standards for recreational vessels and associated equipment to the Coast Guard, which must, *inter alia*, consult with a special National Boating Safety Advisory Council before exercising that authority. The Coast Guard may issue exemptions from its regulations if boating safety will not be adversely affected. Section 10 of the Act sets forth an express pre-emption clause, and § 40's saving clause provides that compliance with the Act or standards, regulations, or orders prescribed under the Act does not relieve a person from liability at common law or under state law. When the Coast Guard issued its first regulations in 1972, the Secretary exempted from pre-emption state laws that regulate matters not covered by the federal regulations. The Coast Guard has since promulgated a host of detailed regulations, but it determined in 1990, after an 18-month inquiry by an Advisory Council subcommittee, that available data did not support adoption of a regulation requiring propel-

ler guards. In 2001, the Advisory Council recommended specific propeller guard regulations, but no regulations regarding their use on recreational boats such as the one in this case are currently pending. Pp. 56–62.

(b) The FBSA does not expressly pre-empt petitioner's common-law tort claims. Section 10's express pre-emption clause—which applies to "a [state or local] law or regulation"—is most naturally read as not encompassing common-law claims for two reasons. First, the article "a" implies a discreteness that is not present in common law. Second, because "a word is known by the company it keeps," *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 575, the terms "law" and "regulation" used together indicate that Congress only pre-empted positive enactments. The Act's saving clause buttresses this conclusion. It assumes that there are some significant number of common-law liability cases to save, and § 10's language permits a narrow reading excluding common-law actions. See *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 868. And the contrast between its general reference to "liability at common law" and § 10's more specific and detailed description of what is pre-empted—including an exception for state regulations addressing "uniquely hazardous conditions"—indicates that § 10 was drafted to pre-empt performance standards and equipment requirements imposed by statute or regulation. This interpretation does not produce anomalous results. It would have been perfectly rational for Congress not to pre-empt common-law claims, which necessarily perform an important remedial role in compensating accident victims. Pp. 62–64.

(c) The Coast Guard's 1990 decision not to regulate propeller guards also does not pre-empt petitioner's claims. That decision left applicable propeller guard law exactly the same as it had been before the subcommittee began its investigation. A Coast Guard decision not to regulate a particular aspect of boating safety is fully consistent with an intent to preserve state regulatory authority pending adoption of specific federal standards. The Coast Guard's explanation for its propeller guard decision reveals only that the available data did not meet the FBSA's stringent criteria for federal regulation. The Coast Guard did not take the further step of deciding that, as a matter of policy, the States and their political subdivisions should not impose some version of propeller guard regulation, and it did not reject propeller guards as unsafe. Although undoubtedly intentional and carefully considered, the 1990 decision does not convey an authoritative message of a federal policy against propeller guards, and nothing in the Coast Guard's recent regulatory activities alters this conclusion. *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, distinguished. Pp. 64–68.

Syllabus

(d) Nor does the FBSA's statutory scheme implicitly pre-empt petitioner's claims. The Act does not require the Coast Guard to promulgate comprehensive regulations covering every aspect of recreational boat safety and design; nor must the Coast Guard certify the acceptability of every recreational boat subject to its jurisdiction. *Ray* v. *Atlantic Richfield Co.*, 435 U. S. 151, and *United States* v. *Locke*, 529 U. S. 89, distinguished. Even if the FBSA could be interpreted as expressly occupying the field of safety regulation of recreational boats with respect to state positive laws and regulations, it does not convey a clear and manifest intent to completely occupy the field so as to foreclose state common-law remedies. This Court's conclusion that the Act's express pre-emption clause does not cover common-law claims suggests the opposite intent. An unembellished statement in a House Report on the Act does not establish an intent to pre-empt common-law remedies. And the FBSA's goal of fostering uniformity in manufacturing regulations, on which respondent ultimately relies for its pre-emption argument, is an important but not unyielding interest, as is demonstrated by the Coast Guard's early grants of broad exemptions for state regulations and by its position in this litigation. Pp. 68–70.

197 Ill. 2d 112, 757 N. E. 2d 75, reversed and remanded.

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

Leslie A. Brueckner argued the cause for petitioner. With her on the briefs were *Arthur H. Bryant*, *Joseph A. Power, Jr.*, and *Todd A. Smith.*

Malcolm L. Stewart argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Acting Assistant Attorney General Katsas*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, *Michael E. Robinson*, *Kirk K. Van Tine*, *Paul M. Geier*, *Dale C. Andrews*, *Peter J. Plocki*, *Robert F. Duncan*, and *G. Alex Weller.*

Stephen M. Shapiro argued the cause for respondent. With him on the brief were *Steffen N. Johnson*, *Michael W. McConnell*, *Kenneth S. Geller*, *Timothy S. Bishop*, and *Daniel J. Connolly.**

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*Briefs of *amici curiae* urging reversal were filed for the State of Missouri et al. by *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, *James R. Layton*, State Solicitor, and *Charles W. Hatfield*, and by the

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a state common-law tort action seeking damages from the manufacturer of an outboard motor is pre-empted either by the enactment of the Federal Boat Safety Act of 1971, 46 U. S. C. §§ 4301–4311 (FBSA, 1971 Act, or Act), or by the decision of the Coast Guard in 1990 not to promulgate a regulation requiring propeller guards on motorboats.

I

On July 10, 1995, petitioner's wife, Jeanne Sprietsma, died as a result of a boating accident on an inland lake that spans the Kentucky-Tennessee border. She was riding in an 18-foot ski boat equipped with a 115-horsepower outboard motor manufactured by respondent, Mercury Marine, which is a division of the Brunswick Corporation (Brunswick). Apparently when the boat turned, she fell overboard and was struck by the propeller, suffering fatal injuries.

Attorneys General for their respective States as follows: *Mark Pryor* of Arkansas, *Bill Lockyer* of California, *Richard Blumenthal* of Connecticut, *Robert A. Butterworth* of Florida, *Earl I. Anzai* of Hawaii, *Steve Carter* of Indiana, *J. Joseph Curran, Jr.,* of Maryland, *Mike McGrath* of Montana, *Frankie Sue Del Papa* of Nevada, *Philip T. McLaughlin* of New Hampshire, *Patricia Madrid* of New Mexico, *Roy Cooper* of North Carolina, *Hardy Myers* of Oregon, *Mark L. Shurtleff* of Utah, *Christine O. Gregoire* of Washington, and *Darrell V. McGraw, Jr.,* of West Virginia; and for the Association of Trial Lawyers of America by *Ross Diamond III* and *Jeffrey Robert White.*

Briefs of *amici curiae* urging affirmance were filed for the Chamber of Commerce of the United States of America by *John G. Roberts, Jr., Catherine E. Stetson,* and *Robin S. Conrad;* for the Maritime Law Association of the United States by *Joshua S. Force, Raymond P. Hayden, William R. Dorsey III,* and *James Patrick Cooney;* for the National Association of Manufacturers et al. by *Kenneth W. Starr, Robert R. Gasaway, Richard A. Cordray, Ashley C. Parrish, Jan S. Amundson,* and *Quentin Riegel;* and for the Product Liability Advisory Council, Inc., by *Alan Untereiner.*

Petitioner filed a nine-count complaint in an Illinois court[1] seeking damages from Brunswick on state-law theories. Each count alleged that Brunswick had manufactured an unreasonably dangerous product because, among other things, the motor was not protected by a propeller guard.[2] The trial court granted respondent's motion to dismiss, and the intermediate appellate court affirmed on the ground that the action was expressly pre-empted by the FBSA. 312 Ill. App. 3d 1040, 729 N. E. 2d 45 (2000). Relying on our intervening decision in *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), the Illinois Supreme Court rejected the appellate court's express pre-emption rationale, but affirmed on implied pre-emption grounds. 197 Ill. 2d 112, 757 N. E. 2d 75 (2001). The court's decision added to a split of authority on this precise issue arising from lawsuits against, among a few others, this particular respondent and its corporate subsidiaries.[3]

We granted certiorari, 534 U. S. 1112 (2002), to decide whether the FBSA pre-empts state common-law claims of

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[1] The complaint alleges that the Sprietsmas and the owners of the boat were residents of Illinois and that the boat had been purchased in Illinois. App. 101.

[2] *Id.*, at 100–122.

[3] Compare *Lewis* v. *Brunswick Corp.*, 107 F. 3d 1494 (CA11) (finding implied pre-emption under the FBSA), cert. granted, 522 U. S. 978 (1997), cert. dismissed, 523 U. S. 1113 (1998); *Carstensen* v. *Brunswick Corp.*, 49 F. 3d 430 (CA8) (finding express pre-emption under the FBSA), cert. denied, 516 U. S. 866 (1995); and *Ryan* v. *Brunswick Corp.*, 454 Mich. 20, 557 N. W. 2d 541 (1997) (finding express pre-emption under the FBSA), with *Moore* v. *Brunswick Bowling & Billiards Corp.*, 889 S. W. 2d 246 (Tex.) (holding that federal law did not pre-empt state law in this context), cert. denied *sub nom. Vivian Industrial Plastics, Inc.* v. *Moore*, 513 U. S. 1057 (1994). See also *Lady* v. *Neal Glaser Marine, Inc.*, 228 F. 3d 598 (CA5 2000) (holding that common-law claims based on the manufacturer's failure to provide a propeller guard were impliedly pre-empted by the FBSA; Outboard Marine, the successor to Neal Glaser Marine, declared bankruptcy shortly after the petition for certiorari was filed), cert. denied *sub nom. Lady* v. *Outboard Marine Corp.*, 532 U. S. 941 (2001).

this character.[4] Because the pre-emption defense raises a threshold issue, we have no occasion to consider the merits of petitioner's claims, or even whether the claims are viable as a matter of Illinois law. We must, however, evaluate three distinct theories that may support the pre-emption defense: (1) that the 1971 Act expressly pre-empts common-law claims; (2) that the Coast Guard's decision not to regulate propeller guards pre-empts the claims; and (3) that the potential conflict between diverse state rules and the federal interest in a uniform system of regulation impliedly pre-empts such claims. Before considering each of these theories, we review the history of federal regulation in this area.

II

The 1971 Act is the most recent and most comprehensive of the several statutes that Congress has enacted to improve the safe operation of recreational boats. A 1910 enactment required three classes of motorboats to carry certain lights, sound signals, life preservers, and fire extinguishers. Act of June 9, 1910, 36 Stat. 462. In 1918, Congress passed a law that required the numbering of motorboats over 16 feet long, Act of June 7, 1918, ch. 93, 40 Stat. 602, and in 1940, it reenacted the above requirements, provided a system of federal inspection, and authorized penalties for the reckless operation of motorboats, Act of Apr. 25, 1940, ch. 155, 54 Stat. 163. In 1958, Congress enacted additional numbering requirements to be administered by the States and directed the States to compile and transmit boating accident statistics to the Secretary of the Treasury. Federal Boating Act of 1958, 72 Stat. 1754. Section 9 of the 1958 Act expressed a policy of encouraging uniformity of boating laws insofar as practicable.

The accident statistics compiled by the States presumably were instrumental in persuading the 1971 Congress that ad-

[4] Brunswick has asserted that federal maritime law governs this case. Because this argument was not raised below, it is waived.

ditional federal legislation was necessary.[5] In its statement of purposes, the FBSA recites that it was enacted "to improve boating safety," to authorize "the establishment of national construction and performance standards for boats and associated equipment," and to encourage greater "uniformity of boating laws and regulations as among the several States and the Federal Government." Pub. L. 92–75, § 2, 85 Stat. 213–214. Three of the provisions implementing these goals are particularly relevant to this case.

Section 5 of the FBSA, as amended and codified in 46 U. S. C. § 4302, authorizes the Secretary of Transportation to issue regulations establishing "minimum safety standards for recreational vessels and associated equipment," and requiring the installation or use of such equipment.[6] The Secretary has delegated this authority to the Coast Guard. See 49 CFR § 1.46(n)(1) (1997). Before exercising that authority,

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[5] The Senate Report on the 1971 Act observed that approximately 40 million Americans engaged in recreational boating activities every year, and that nearly 7,000 persons had died in boating accidents during the preceding 5-year period. S. Rep. No. 92–248, pp. 6–7 (1971) (hereinafter S. Rep.). The Report added: "It seems apparent that the annual loss of life is of sufficiently alarming proportion that the Federal Government should require products involved to be built to standards of safety commensurate with the risks associated with their use. Similar federal legislation exists with regard to other products, including aircraft and motor vehicles. Also, safety standards and requirements for certain categories of larger commercial vessels have existed for many years." *Id.*, at 13.

[6] Title 46 U. S. C. § 4302 provides:

"(a) The Secretary may prescribe regulations—

"(1) establishing minimum safety standards for recreational vessels and associated equipment, and establishing procedures and tests required to measure conformance with those standards, with each standard—

"(A) meeting the need for recreational vessel safety; and

"(B) being stated, insofar as practicable, in terms of performance;

"(2) requiring the installation, carrying, or use of associated equipment . . . on recreational vessels and classes of recreational vessels subject to this chapter, and prohibiting the installation, carrying, or use of associated equipment that does not conform with safety standards established under this section . . . ."

the Coast Guard must consider certain factors, such as the extent to which the proposed regulation will contribute to boating safety, and must consult with a special National Boating Safety Advisory Council appointed pursuant to § 33 of the Act, 46 U. S. C. § 13110.[7] The Advisory Council consists of 21 members, 7 representatives from each of three different groups: (1) "State officials responsible for State boating safety programs," (2) boat and equipment manufacturers, and (3) "national recreational boating organizations and . . . the general public." § 13110(b). The Coast Guard may also issue exemptions from its regulations if it determines that boating safety "will not be adversely affected." § 4305.

Section 10 of the Act, as codified in 46 U. S. C. § 4306, sets forth the Act's pre-emption clause and thus provides the basis for respondent's express pre-emption argument. It states in full:

> "Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce

[7] "In prescribing regulations under this section, the Secretary shall, among other things—

"(1) consider the need for and the extent to which the regulations will contribute to recreational vessel safety;

"(2) consider relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation;

"(3) not compel substantial alteration of a recreational vessel or item of associated equipment that is in existence, or the construction or manufacture of which is begun before the effective date of the regulation, but subject to that limitation may require compliance or performance, to avoid a substantial risk of personal injury to the public, that the Secretary considers appropriate in relation to the degree of hazard that the compliance will correct; and

"(4) consult with the National Boating Safety Advisory Council established under section 13110 of this title about the considerations referred to in clauses (1)–(3) of this subsection."

> a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title."

Section 40, 46 U. S. C. § 4311, sets forth the penalties that may be assessed against persons who violate the Act. At the end of that section, Congress included the following saving clause:

> "Compliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law." § 4311(g).

Federal Regulation Under the FBSA

The day after the President signed the FBSA into law, the Secretary of Transportation took action that was based on the assumption that § 10 would pre-empt existing state regulation that "is not identical to a regulation prescribed" under § 5 of the Act, even if no such federal regulation had been promulgated. On August 11, 1971, the Secretary issued a statement exempting all then-existing state laws from preemption under the Act. 36 Fed. Reg. 15764–15765. He explained that boating safety would "not be adversely affected by continuing in effect those existing laws and regulations of the various States and political subdivisions" until new federal regulations could be issued. *Id.*, at 15765.

One year later, on August 4, 1972, the Coast Guard issued its first regulations under § 5 of the Act. See 37 Fed. Reg. 15777–15785. Those regulations included boat performance and safety standards such as requirements for hull identifi-

cation numbers, maximum capacity and warnings of such capacity, and minimum boat flotation. They did not include any propeller guard requirement. After those federal regulations became effective, the Secretary limited the scope of his original blanket exemption to pre-empt those "State statutes and regulations" that concerned requirements covered by the 1972 regulations. See 38 Fed. Reg. 6914–6915 (1973). Existing state laws that regulated matters not covered by the federal regulations continued to be exempted from preemption. *Ibid.*

In the years since, the Coast Guard has promulgated a host of detailed regulations. Some prescribe the use of specified equipment, such as personal flotation devices and visual distress signals, 33 CFR pts. 175(B), (C) (2001), and certain procedures, such as compliance labeling by manufacturers and prompt accident reporting by operators, pts. 181(B), 173(C). See generally pts. 173–181. Other regulations impose precise standards governing the design and manufacture of boats themselves and of associated equipment, such as electrical and fuel systems, ventilation, and "start-in-gear protection" devices. Pt. 183; cf. *Chao* v. *Mallard Bay Drilling, Inc.*, 534 U. S. 235, 242 (2002) ("Congress has assigned a broad and important mission to the Coast Guard. . . . [T]he Coast Guard possesses authority to promulgate and enforce regulations promoting the safety of vessels . . .").

Coast Guard Consideration of Propeller Guard Regulation

In May 1988, the Coast Guard decided that the number of recreational boating accidents in which persons in the water were struck by propellers merited a special study.[8] Acting

[8] Between 1976 and 1990, the Coast Guard officially reported about 100 propeller-strike injuries in the United States per year. App. in *Lewis* v. *Brunswick*, O. T. 1997, No. 97–288, p. 170. A 1992 study by members of the Johns Hopkins University Injury Prevention Center and the Institute for Injury Reduction concluded that, when adjusted for underreporting,

at the request of the Coast Guard, the National Boating Safety Advisory Council appointed a special Propeller Guard Subcommittee. The subcommittee was directed to review "the available data on the prevention of propeller-strike accidents" and to study the "various methods of shrouding propellers to prevent contact with [a] person in the water." App. 43.

After 18 months of study, the subcommittee recommended that the Coast Guard "should take no regulatory action to require propeller guards." *Id.*, at 40. Its recommendation rested upon findings that, given current technology, feasible propeller guards might prevent penetrating injuries but increase the potential for blunt trauma caused by collision with the guard, which enlarges the boat's underwater profile; feasible models would cause power and speed loss at higher speeds; and it would be "prohibitive[ly]" expensive to retrofit all existing boats with propeller guards because "[n]o simple universal design suitable for all boats and motors in existence" had been proved feasible. *Id.*, at 36–38.

The Advisory Council endorsed the subcommittee's recommendation, as did the Coast Guard. In a 1990 letter to the Council, the Chief of the Coast Guard's Office of Navigation Safety and Waterway Services agreed that the available accident data did not support the adoption of a regulation requiring propeller guards on motorboats, but stated that the Coast Guard would continue to review information "regarding development and testing of new propeller guarding devices or other information on the state of the art." *Id.*, at 81. In 1995, 1996, and 1997, the Coast Guard invited public comment on various proposals to reduce the number of injuries involving propeller strikes.

In April 2001, the Advisory Council recommended that the Coast Guard develop four specific regulations. See 66 Fed.

"the true number of propeller injuries and fatalities may be closer to . . . 2,000–3,000 per year." *Id.*, at 199.

Reg. 63645, 63647.[9] In response, in December 2001, the Coast Guard published a notice of proposed rulemaking addressing one of the recommendations. The proposed rule, if adopted, would require an owner of a nonplaning houseboat for rent to equip her vessel with either a propeller guard or "a combination of three propeller injury avoidance measures." *Ibid.* The Advisory Council also recommended that the Coast Guard require "manufacturers and importers of new planing vessels 12 feet to 26 feet in length with propellers aft of the transom to select and install one of several factory installed propeller injury avoidance methods." *Ibid.* Although the Coast Guard has indicated that this recommendation, along with the Advisory Council's other recommendations, will be addressed in "subsequent regulatory projects," *ibid.*, it has not yet issued any regulation either requiring or prohibiting propeller guards on recreational planing vessels such as the boat involved in this case.

III

Because the FBSA contains an express pre-emption clause, our "task of statutory construction must in the first instance focus on the plain wording of the clause, which nec-

[9] "After discussing the alternatives and their cost, the Council recommended that the Coast Guard . . . develop four specific regulations:

"(1) Require owners of all propeller driven vessels 12 feet in length and longer with propellers aft of the transom to display propeller warning labels and to employ an emergency cut-off switch, where installed;

"(2) Require manufacturers and importers of new planing vessels 12 feet to 26 feet in length with propellers aft of the transom to select and install one of several factory installed propeller injury avoidance methods;

"(3) Require manufacturers and importers of new non-planing vessels 12 feet in length and longer with propellers aft of the transom to select and install one of several factory installed propeller injury avoidance methods; and

"(4) Require owners of all non-planing rental boats with propellers aft of the transom to install either a jet propulsion system or a propeller guard or all of several propeller injury avoidance measures." 66 Fed. Reg., at 63647.

essarily contains the best evidence of Congress' pre-emptive intent." *CSX Transp., Inc.* v. *Easterwood*, 507 U. S. 658, 664 (1993). Here, the express pre-emption clause in § 10 applies to "a [state or local] law or regulation." 46 U. S. C. § 4306. We think that this language is most naturally read as not encompassing common-law claims for two reasons. First, the article "a" before "law or regulation" implies a discreteness—which is embodied in statutes and regulations—that is not present in the common law. Second, because "a word is known by the company it keeps," *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 575 (1995), the terms "law" and "regulation" used together in the pre-emption clause indicate that Congress pre-empted only positive enactments. If "law" were read broadly so as to include the common law, it might also be interpreted to include regulations, which would render the express reference to "regulation" in the pre-emption clause superfluous.

The Act's saving clause buttresses this conclusion. See *Geier* v. *American Honda Motor Co.*, 529 U. S., at 867–868. It states that "[c]ompliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law." § 4311(g). As we held in *Geier*, the "saving clause assumes that there are some significant number of common-law liability cases to save [and t]he language of the pre-emption provision permits a narrow reading that excludes common-law actions." *Id.*, at 868.

The saving clause is also relevant for an independent reason. The contrast between its general reference to "liability at common law" and the more specific and detailed description of what is pre-empted by § 10—including the exception for state regulations addressing "uniquely hazardous conditions"—indicates that § 10 was drafted to pre-empt performance standards and equipment requirements imposed by statute or regulation.

Our interpretation of the statute's language does not produce anomalous results. It would have been perfectly rational for Congress not to pre-empt common-law claims, which—unlike most administrative and legislative regulations—necessarily perform an important remedial role in compensating accident victims. Cf. *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 251 (1984). Indeed, compensation is the manifest object of the saving clause, which focuses not on state authority to regulate, but on preserving "liability at common law or under State law." In context, this phrase surely refers to private damages remedies.[10] We thus agree with the Illinois Supreme Court's conclusion that petitioner's common-law tort claims are not expressly pre-empted by the FBSA.

IV

Even if § 10 of the FBSA does not expressly pre-empt state common-law claims, respondent contends that such claims are implicitly pre-empted by the entire statute, and more specifically by the Coast Guard's decision not to regulate propeller guards. Both are viable pre-emption theories:

> "We have recognized that a federal statute implicitly overrides state law either when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively, *English* v. *General Elec. Co.*, 496 U. S. 72, 78–79 (1990), or when state law is in actual conflict with federal law. We have found implied conflict pre-emption where it is 'impossible for a private party to comply with both state and federal requirements,' *id.*, at 79, or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines* v. *Davidowitz*, 312 U. S.

[10] The FBSA itself imposes civil money penalties payable to the United States, as well as imprisonment for willful violations, 46 U. S. C. § 4311, but does not authorize any private damages remedies for persons injured by noncomplying operators, boats, or equipment.

52, 67 (1941)." *Freightliner Corp.* v. *Myrick*, 514 U. S. 280, 287 (1995).

Moreover, Congress' inclusion of an express pre-emption clause "does *not* bar the ordinary working of conflict pre-emption principles," *Geier*, 529 U. S., at 869 (emphasis in original), that find implied pre-emption "where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Freightliner Corp.*, 514 U. S., at 287 (internal quotation marks and citations omitted). We are not persuaded, however, that the FBSA has any such pre-emptive effect.

We first consider, and reject, respondent's reliance on the Coast Guard's decision not to adopt a regulation requiring propeller guards on motorboats. It is quite wrong to view that decision as the functional equivalent of a regulation prohibiting all States and their political subdivisions from adopting such a regulation. The decision in 1990 to accept the subcommittee's recommendation to "take no regulatory action," App. 80, left the law applicable to propeller guards exactly the same as it had been before the subcommittee began its investigation. Of course, if a state common-law claim directly conflicted with a federal regulation promulgated under the Act, or if it were impossible to comply with any such regulation without incurring liability under state common law, pre-emption would occur. This, however, is not such a case.

Indeed, history teaches us that a Coast Guard decision not to regulate a particular aspect of boating safety is fully consistent with an intent to preserve state regulatory authority pending the adoption of specific federal standards. That was the course the Coast Guard followed in 1971 immediately after the Act was passed, and again when it imposed its first regulations in 1972 and 1973. The Coast Guard has never taken the position that the litigation of state common-law

claims relating to an area not yet subject to federal regulation would conflict with "the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941).

The Illinois Supreme Court concluded "that the Coast Guard's failure to promulgate a propeller guard requirement here equates to a ruling that no such regulation is appropriate pursuant to the policy of the FBSA." 197 Ill. 2d, at 128, 757 N. E. 2d, at 85. With regard to policies defined by Congress, we have recognized that "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated, and in that event would have as much pre-emptive force as a decision *to* regulate." *Arkansas Elec. Cooperative Corp.* v. *Arkansas Pub. Serv. Comm'n*, 461 U. S. 375, 384 (1983); see also *Bethlehem Steel Co.* v. *New York State Labor Relations Bd.*, 330 U. S. 767, 774 (1947) (state law is pre-empted "where failure of the federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute"). In this instance, however, the Illinois Supreme Court's conclusion does not accurately reflect the Coast Guard's entire explanation for its decision:

> "The regulatory process is very structured and stringent regarding justification. Available propeller guard accident data do not support imposition of a regulation requiring propeller guards on motorboats. Regulatory action is also limited by the many questions about whether a universally acceptable propeller guard is available or technically feasible in all modes of boat operation. Additionally, the question of retrofitting millions of boats would certainly be a major economic consideration." App. 80.

This statement reveals only a judgment that the available data did not meet the FBSA's "stringent" criteria for federal

regulation. The Coast Guard did not take the further step of deciding that, as a matter of policy, the States and their political subdivisions should not impose some version of propeller guard regulation, and it most definitely did not reject propeller guards as unsafe.[11] The Coast Guard's apparent focus was on the lack of any "universally acceptable" propeller guard for "all modes of boat operation." But nothing in its official explanation would be inconsistent with a tort verdict premised on a jury's finding that some type of propeller guard should have been installed on this particular kind of boat equipped with respondent's particular type of motor. Thus, although the Coast Guard's decision not to require propeller guards was undoubtedly intentional and carefully considered, it does not convey an "authoritative" message of a federal policy against propeller guards. And nothing in the Coast Guard's recent regulatory activities alters this conclusion.

The Coast Guard's decision *not* to impose a propeller guard requirement presents a sharp contrast to the decision of the Secretary of Transportation that was given pre-emptive effect in *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000). As the Solicitor General had argued in that case, the promulgation of Federal Motor Vehicle Safety Standard (FMVSS) 208 embodied an affirmative "policy judgment that safety would best be promoted if manufacturers installed *alternative* protection systems in their fleets rather than one particular system in every car." *Id.*, at 881. In finding pre-emption, we expressly placed "weight upon the DOT's interpretation of FMVSS 208's objectives and its conclusion, as set forth in the Government's brief, that a tort suit such as this one would ' " 'stan[d] as an obstacle to the accomplish-

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[11] Indeed, in response to the Propeller Guard Subcommittee's recommendation in favor of "educational and awareness campaigns," the Coast Guard indicated that it would publish a series of articles "aimed at avoiding boat/propeller strike accidents," which could include the topic of "available propeller guards." App. 82–83.

ment and execution'"' of those objectives . . . . Congress has delegated to DOT authority to implement the statute; the subject matter is technical; and the relevant history and background are complex and extensive. The agency is likely to have a thorough understanding of its own regulation and its objectives and is 'uniquely qualified' to comprehend the likely impact of state requirements." *Id.*, at 883. In the case before us today, the Solicitor General, joined by counsel for the Coast Guard, has informed us that the agency does not view the 1990 refusal to regulate or any subsequent regulatory actions by the Coast Guard as having any pre-emptive effect. Our reasoning in *Geier* therefore provides strong support for petitioner's submission.

V

Even though the refusal to regulate propeller guards in 1990 had no pre-emptive effect, it is possible that the statutory scheme as a whole implicitly pre-empted common-law claims such as petitioner's when it was enacted in 1971. If that were so, the exemption carried forward by the Secretary in 1973 after the first federal regulations were adopted might have saved existing state common-law rules "in effect on the effective date" of the 1971 Act, so far as those rules relate to propeller guards. 38 Fed. Reg., at 6915. But even if that is not the case, we think it clear that the FBSA did not so completely occupy the field of safety regulation of recreational boats as to foreclose state common-law remedies.

In *Ray* v. *Atlantic Richfield Co.*, 435 U. S. 151 (1978), we considered a federal statute that directed the Secretary of Transportation to determine "which oil tankers are sufficiently safe to be allowed to proceed in the navigable waters of the United States," and after inspection to certify "each vessel as sufficiently safe to protect the marine environment." *Id.*, at 163, 165. We held that this scheme of mandatory federal regulation implicitly pre-empted the power of the State of Washington "to exclude from Puget Sound ves-

sels certified by the Secretary as having acceptable design characteristics, unless they satisfy the different and higher design requirements imposed by state law." *Id.*, at 165. As we explained in *United States* v. *Locke*, 529 U. S. 89 (2000), the analysis in *Ray* was governed by field-preemption rules because the rules at issue were in a "field reserved for federal regulation" and "Congress ha[d] left no room for state regulation of these matters." 529 U. S., at 111. In particular, Title II of the Ports and Waterways Safety Act of 1972 (PWSA) *required* the Secretary to issue "such rules and regulations as may be necessary with respect to the design, construction, and operation of the covered vessels." 435 U. S., at 161.

The Illinois Supreme Court relied on both *Ray* and *Locke* to find petitioner's claims impliedly pre-empted. But the FBSA, unlike Title II of the PWSA, does not *require* the Coast Guard to promulgate comprehensive regulations covering every aspect of recreational boat safety and design; nor must the Coast Guard certify the acceptability of every recreational boat subject to its jurisdiction. Moreover, neither Title II of the PWSA nor the holding in either *Ray* or *Locke* purported to pre-empt possible common-law claims, whereas the FBSA expressly preserves such claims.

The FBSA might be interpreted as expressly occupying the field with respect to state positive laws and regulations but its structure and framework do not convey a "clear and manifest" intent, *English* v. *General Elec. Co.*, 496 U. S. 72, 79 (1990) (internal quotation marks and citations omitted), to go even further and implicitly pre-empt all state common law relating to boat manufacture. Rather, our conclusion that the Act's express pre-emption clause does not cover common-law claims suggests the opposite intent. See *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 517 (1992); *id.*, at 547 (SCALIA, J., concurring in judgment in part and dissenting in part). Nor is a clear and manifest intent to sweep away state common law established by an unembellished

statement in a House Report that the 1971 Act "preempts the field on boating standards or regulations." H. R. Rep. No. 92–324, p. 11 (1971). The statement was made prior to the amendment containing the saving clause, and nothing in the entire report suggests that it meant the occupied "field" to include judge-made common law.

Respondent ultimately relies upon one of the FBSA's main goals: fostering uniformity in manufacturing regulations. Uniformity is undoubtedly important to the industry, and the statute's pre-emption clause was meant to "assur[e] that manufacture for the domestic trade will not involve compliance with widely varying local requirements." S. Rep. 20. Yet this interest is not unyielding, as is demonstrated both by the Coast Guard's early grants of broad exemptions for state regulations and by the position it has taken in this litigation. Absent a contrary decision by the Coast Guard, the concern with uniformity does not justify the displacement of state common-law remedies that compensate accident victims and their families and that serve the Act's more prominent objective, emphasized by its title, of promoting boating safety.

The judgment of the Illinois Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

UNITED STATES ET AL. *v.* BEAN

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

No. 01–704. Argued October 16, 2002—Decided December 10, 2002

Because of respondent's felony conviction, he was prohibited by 18 U. S. C. § 922(g)(1) from possessing, distributing, or receiving firearms or ammunition. Relying on § 925(c), he applied to the Bureau of Alcohol, Tobacco, and Firearms (ATF) for relief from his firearms disabilities. ATF returned the application unprocessed, explaining that its annual appropriations law forbade it from expending any funds to investigate or act upon such applications. Invoking § 925(c)'s judicial review provision, he filed suit, asking the District Court to conduct its own inquiry into his fitness to possess a gun and to issue a judicial order granting relief. The court granted the requested relief, and the Fifth Circuit affirmed.

Held: The absence of an actual denial by ATF of a felon's petition precludes judicial review under § 925(c). The Secretary of the Treasury is authorized to grant relief from a firearms disability if certain preconditions are met, and an applicant may seek federal-court review if the Secretary denies his application. *Ibid.* Since 1992, however, the appropriations bar has prevented ATF, to which the Secretary has delegated this authority, from using appropriated funds to investigate or act upon the applications. Section 925(c)'s text and the procedure it lays out for seeking relief make clear that an actual decision by ATF on an application is a prerequisite for judicial review, and that mere inaction by ATF does not invest a district court with independent jurisdiction. Grammatically, the phrase "denied by the Secretary" references the Secretary's decision on whether an applicant "will not be likely to act in a manner dangerous to public safety," and whether "the granting of the relief would not be contrary to the public interest." Such determination can hardly be construed as anything but a decision actually denying the application. Under § 925(c)'s procedure for those seeking relief, the Secretary, *i. e.*, ATF, has broad authority to grant or deny relief, even when the statutory prerequisites are satisfied. This procedure shows that judicial review cannot occur without a dispositive decision by ATF. First, in the absence of a statutorily defined standard of review for action under § 925(c), the Administrative Procedure Act (APA) supplies the applicable standard. 5 U. S. C. §§ 701(a), 706(2)(A). The APA's "arbitrary and capricious" test, by its nature, contemplates review of some

action by another entity. Second, both parts of § 925(c)'s standard for granting relief—whether an applicant is "likely to act in a manner dangerous to public safety" and whether the relief is in the "public interest"—are policy-based determinations and, hence, point to ATF as the primary decisionmaker. Third, § 925(c) allows the admission of additional evidence in district court proceedings only in exceptional circumstances. Congressional assignment of such a circumscribed role to a district court shows that the statute contemplates that a court's determination will heavily rely on the record and the ATF's decision. Indeed, the very use in § 925(c) of the word "review" to describe a court's responsibility in this statutory scheme signifies that it cannot grant relief on its own, absent an antecedent actual denial by ATF. Pp. 74–78.

253 F. 3d 234, reversed.

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

Deputy Solicitor General Kneedler argued the cause for petitioners. With him on the briefs were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Irving L. Gornstein*, *Mark B. Stern*, and *Thomas M. Bondy.*

Thomas C. Goldstein argued the cause for respondent. With him on the brief were *Larry C. Hunter* and *Amy Howe.**

JUSTICE THOMAS delivered the opinion of the Court.

We consider in this case whether, despite appropriation provisions barring the Bureau of Alcohol, Tobacco, and Firearms (ATF) from acting on applications for relief from firearms disabilities of persons convicted of a felony, a federal district court has authority under 18 U. S. C. § 925(c) to grant such relief.

I

After attending a gun show in Laredo, Texas, respondent, Thomas Lamar Bean, a gun dealer, and his associates drove

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**Craig Goldblatt* and *Mathew S. Nosanchuk* filed a brief for the Violence Policy Center as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Law Enforcement Alliance of America, Inc., by *Richard E. Gardiner;* and for the Second Amendment Foundation by *William M. Gustavson.*

respondent's vehicle to Nuevo Laredo, Mexico, for dinner. *Bean* v. *Bureau of Alcohol, Tobacco and Firearms*, 253 F. 3d 234, 236 (CA5 2001). When Mexican officials stopped the vehicle at the border, they found in the back, in plain view, approximately 200 rounds of ammunition. *Ibid.* According to respondent, he had instructed his associates to remove any firearms and ammunition from his vehicle, but inexplicably one box remained. *Ibid.* Respondent was convicted in a Mexican court of importing ammunition into Mexico and sentenced to five years' imprisonment.

Because of his felony conviction, respondent was prohibited by 18 U. S. C. § 922(g)(1) from possessing, distributing, or receiving firearms or ammunition. Relying on § 925(c), respondent applied to ATF for relief from his firearms disabilities. ATF returned the application unprocessed, explaining that its annual appropriations law forbade it from expending any funds to investigate or act upon applications such as respondent's.

Respondent then filed suit in the United States District Court for the Eastern District of Texas. Relying on the judicial review provision in § 925(c), respondent asked the District Court to conduct its own inquiry into his fitness to possess a gun, and to issue a judicial order granting relief from his firearms disabilities. Respondent attached various affidavits from persons attesting to his fitness to possess firearms. After conducting a hearing, the court entered judgment granting respondent the requested relief. The Court of Appeals for the Fifth Circuit affirmed, concluding that congressional refusal to provide funding to ATF for reviewing applications such as respondent's "is not the requisite direct and definite suspension or repeal of the subject rights." 253 F. 3d, at 239. The Fifth Circuit then proceeded to hold that the District Court had jurisdiction to review ATF's (in)action. We granted certiorari. 534 U. S. 1112 (2002).

II

Under federal law, a person who is convicted of a felony is prohibited from possessing firearms. See § 922(g)(1). The Secretary of the Treasury is authorized to grant relief from that prohibition if it is established to his satisfaction that certain preconditions are met. See § 925(c).[1] An applicant may seek judicial review from a "United States district court" if his application "is denied by the Secretary." *Ibid.*

Since 1992, however, the appropriations bar has prevented ATF, to which the Secretary has delegated authority to act on § 925(c) applications,[2] from using "funds appropriated

[1] Title 18 U. S. C. § 925(c) provides:

"A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor."

[2] Respondent contends that congressional denial of funds to ATF did not eliminate the Secretary's power to act on his application. In support, respondent notes that § 925(c) refers to the action by "the Secretary." That claim, however, is waived, as respondent raised it for the first time in his brief on the merits to this Court.

Even if considered on the merits, respondent's argument faces several difficulties. First, it appears that the Secretary delegated to ATF the

herein . . . to investigate or act upon applications for relief from Federal firearms disabilities under 18 U. S. C. [§]925(c)." Treasury, Postal Service, and General Government Appropriations Act, 1993, Pub. L. 102–393, 106 Stat. 1732.[3] Accordingly, ATF, upon receipt of respondent's petition, returned it, explaining that "[s]ince October 1992, ATF's annual appropriation has prohibited the expending of any funds to investigate or act upon applications for relief from Federal firearms disabilities." App. 33–34. Respondent contends that ATF's failure to act constitutes a "denial" within the meaning of § 925(c), and that, therefore, district courts have jurisdiction to review such inaction.

We disagree. Inaction by ATF does not amount to a "denial" within the meaning of § 925(c). The text of § 925(c) and

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exclusive authority to act on petitions brought under § 925(c), see 27 CFR §§ 178.144(b) and (d) (2002); such delegation is not unreasonable. Second, even assuming the Secretary has retained the authority to act on such petitions, it is not clear that respondent would prevail were he to file a requisite action under 5 U. S. C. § 706(1) (providing for judicial review to "compel agency action unlawfully withheld or unreasonably delayed"). Not only does the Secretary, by the explicit terms of the statute, possess broad discretion as to whether to grant relief, see *infra*, at 76–78, but congressional withholding of funds from ATF would likely inform his exercise of discretion.

[3] In each subsequent year, Congress has retained the bar on the use of appropriated funds to process applications filed by individuals. Treasury and General Government Appropriations Act, 2002, Pub. L. 107–67, 115 Stat. 519; Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763A–129; Treasury and General Government Appropriations Act, 2000, Pub. L. 106–58, 113 Stat. 434; Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681–485; Treasury and General Government Appropriations Act, 1998, Pub. L. 105–61, 111 Stat. 1277; Treasury, Postal Service, and General Government Appropriations Act, 1997, Pub. L. 104–208, 110 Stat. 3009–319; Treasury, Postal Service, and General Government Appropriations Act, 1996, Pub. L. 104–52, 109 Stat. 471; Treasury, Postal Service and General Government Appropriations Act, 1995, Pub. L. 103–329, 108 Stat. 2385; Treasury, Postal Service, and General Government Appropriations Act, 1994, Pub. L. 103–123, 107 Stat. 1228.

the procedure it lays out for seeking relief make clear that an actual decision by ATF on an application is a prerequisite for judicial review, and that mere inaction by ATF does not invest a district court with independent jurisdiction to act on an application.

Grammatically, the phrase "denied by the Secretary" references the Secretary's decision on whether an applicant "will not be likely to act in a manner dangerous to public safety," and whether "the granting of the relief would not be contrary to the public interest." The determination whether an applicant is "likely to act in a manner dangerous to public safety" can hardly be construed as anything but a decision actually denying the application.[4] And, in fact, respondent does not contend that ATF actually passed on his application, but rather claims that "refusal to grant relief constitutes a literal, or at least a *constructive*, denial of the application because it has precisely the same impact on [the applicant] as denial on the merits." Brief for Respondent 35 (internal quotation marks and citations omitted).

The procedure that § 925(c) lays out for those seeking relief also leads us to conclude that an actual adverse action on the application by ATF is a prerequisite for judicial review. Section 925(c) requires an applicant, as a first step, to petition the Secretary and establish to the Secretary's satisfaction that the applicant is eligible for relief. The Secretary, in his discretion, may grant or deny the request based on the broad considerations outlined above. Only then, if the

[4] Also counseling against construing failure to act as a denial for purposes of § 925(c) is the fact that while the Administrative Procedure Act (APA) draws a distinction between a "denial" and a "failure to act," see 5 U. S. C. § 551(13), an applicant may obtain judicial review under § 925(c) only if an application is denied. See 2A N. Singer, Sutherland on Statutes and Statutory Construction § 46:06, p. 194 (6th ed. 2000) ("The use of different terms within related statutes generally implies that different meanings were intended").

Secretary denies relief, may an applicant seek review in a district court.

This broad authority of the Secretary, *i. e.*, ATF, to grant or deny relief, even when the statutory prerequisites are satisfied, shows that judicial review under § 925(c) cannot occur without a dispositive decision by ATF. First, in the absence of a statutorily defined standard of review for action under § 925(c), the APA supplies the applicable standard. 5 U. S. C. § 701(a). Under the APA, judicial review is usually limited to determining whether agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 706(2)(A). Application of the APA standard of review here indicates that judicial review is predicated upon ATF's dispositive decision: the "arbitrary and capricious" test in its nature contemplates review of some action by another entity, rather than initial judgment of the court itself.

Second, both parts of the standard for granting relief point to ATF as the primary decisionmaker. Whether an applicant is "likely to act in a manner dangerous to public safety" presupposes an inquiry into that applicant's background—a function best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation. Similarly, the "public interest" standard calls for an inherently policy-based decision best left in the hands of an agency.

Third, the admission of additional evidence in district court proceedings is contemplated only in exceptional circumstances. See 18 U. S. C. § 925(c) (allowing, "in [district court's] discretion," admission of evidence where "failure to do so would result in a miscarriage of justice"). Congressional assignment of such a circumscribed role to a district court shows that the statute contemplates that a district court's determination will heavily rely on the record and the decision made by ATF. Indeed, the very use in § 925(c) of

the word "review" to describe a district court's responsibility in this statutory scheme signifies that a district court cannot grant relief on its own, absent an antecedent actual denial by ATF.

Accordingly, we hold that the absence of an actual denial of respondent's petition by ATF precludes judicial review under § 925(c), and therefore reverse the judgment of the Court of Appeals.

It is so ordered.

Syllabus

HOWSAM, INDIVIDUALLY AND AS TRUSTEE FOR THE E. RICHARD HOWSAM, JR., IRREVOCABLE LIFE INSURANCE TRUST DATED MAY 14, 1982 *v.* DEAN WITTER REYNOLDS, INC.

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

No. 01–800. Argued October 9, 2002—Decided December 10, 2002

Per respondent Dean Witter Reynolds, Inc.'s standard client agreement, petitioner Howsam chose to arbitrate her dispute with the company before the National Association of Securities Dealers (NASD). NASD's Code of Arbitration Procedure § 10304 states that no dispute "shall be eligible for submission . . . where six (6) years have elapsed from the occurrence or event giving rise to the . . . dispute." Dean Witter filed this suit, asking the Federal District Court to declare the dispute ineligible for arbitration because it was more than six years old and seeking an injunction to prohibit Howsam from proceeding in arbitration. The court dismissed the action, stating that the NASD arbitrator should interpret and apply the NASD rule. In reversing, the Tenth Circuit found that the rule's application presented a question of the underlying dispute's "arbitrability"; and the presumption is that a court will ordinarily decide an arbitrability question.

Held: An NASD arbitrator should apply the time limit rule to the underlying dispute. Pp. 83–86.

(a) "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582. The question whether parties have submitted a particular dispute to arbitration, *i. e.*, the "*question of arbitrability,*" is "an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise." *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U. S. 643, 649. The phrase "question of arbitrability" has a limited scope, applicable in the kind of narrow circumstance where contracting parties would likely have expected a court to have decided the gateway matter. But the phrase is *not* applicable in other kinds of general circumstance where parties would likely expect that an arbitrator would decide the question—" 'procedural' questions which grow out of the dispute and bear on its final disposition," *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543, 557, and "allegation[s] of waiver, delay, or a like

Syllabus

defense to arbitrability," *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24–25. Following this precedent, the application of the NASD rule is not a "question of arbitrability" but an "aspec[t] of the [controversy] which called the grievance procedures into play." *John Wiley & Sons, Inc.*, *supra*, at 559. NASD arbitrators, comparatively more expert about their own rule's meaning, are comparatively better able to interpret and to apply it. In the absence of any statement to the contrary in the arbitration agreement, it is reasonable to infer that the parties intended the agreement to reflect that understanding. And for the law to assume an expectation that aligns (1) decisionmaker with (2) comparative expertise will help better to secure the underlying controversy's fair and expeditious resolution. Pp. 83–86.

(b) Dean Witter's argument that, even without an antiarbitration presumption, the contracts call for judicial determination is unpersuasive. The word "eligible" in the NASD Code's time limit rule does not, as Dean Witter claims, indicate the parties' intent for the rule to be resolved by the court prior to arbitration. Parties to an arbitration contract would normally expect a forum-based decisionmaker to decide forum-specific procedural gateway matters, and any temptation here to place special antiarbitration weight on the word "eligible" in § 10304 is counterbalanced by the NASD rule that "arbitrators shall be empowered to interpret and determine the applicability" of all code provisions, § 10324. P. 86.

261 F. 3d 956, reversed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 87. O'CONNOR, J., took no part in the consideration or decision of the case.

Alan C. Friedberg argued the cause and filed briefs for petitioner.

Matthew D. Roberts argued the cause for the Securities and Exchange Commission as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Deputy Solicitor General Kneedler*, *Meyer Eisenberg*, *Jacob H. Stillman*, and *Mark Pennington.*

Kenneth W. Starr argued the cause for respondent. With him on the brief were *Steven G. Bradbury*, *Daryl Joseffer*,

Ashley C. Parrish, Donald G. Kempf, Jr., and *Bradford D. Kaufman.**

JUSTICE BREYER delivered the opinion of the Court.

This case focuses upon an arbitration rule of the National Association of Securities Dealers (NASD). The rule states that no dispute "shall be eligible for submission to arbitration . . . where six (6) years have elapsed from the occurrence or event giving rise to the . . . dispute." NASD Code of Arbitration Procedure § 10304 (1984) (NASD Code or Code). We must decide whether a court or an NASD arbitrator should apply the rule to the underlying controversy. We conclude that the matter is for the arbitrator.

I

The underlying controversy arises out of investment advice that Dean Witter Reynolds, Inc. (Dean Witter), provided its client, Karen Howsam, when, some time between 1986 and 1994, it recommended that she buy and hold interests in four limited partnerships. Howsam says that Dean Witter misrepresented the virtues of the partnerships. The resulting controversy falls within their standard Client Service Agreement's arbitration clause, which provides:

> "[A]ll controversies . . . concerning or arising from . . . any account . . . , any transaction . . . , or . . . the construction, performance or breach of . . . any . . . agreement between us . . . shall be determined by arbitration before any self-regulatory organization or exchange of which Dean Witter is a member." App. 6–7.

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*Briefs of *amici curiae* urging affirmance were filed for the Competitive Enterprise Institute by *C. Boyden Gray* and *James V. DeLong;* and for the Securities Industry Association by *Douglas R. Cox* and *Stuart J. Kaswell.*

F. Paul Bland, Jr., Deborah M. Zuckerman, and *Michael R. Schuster* filed a brief for Trial Lawyers for Public Justice et al. as *amici curiae.*

The agreement also provides that Howsam can select the arbitration forum. And Howsam chose arbitration before the NASD.

To obtain NASD arbitration, Howsam signed the NASD's Uniform Submission Agreement. That agreement specified that the "present matter in controversy" was submitted for arbitration "in accordance with" the NASD's "Code of Arbitration Procedure." *Id.*, at 24. And that Code contains the provision at issue here, a provision stating that no dispute "shall be eligible for submission . . . where six (6) years have elapsed from the occurrence or event giving rise to the . . . dispute." NASD Code § 10304.

After the Uniform Submission Agreement was executed, Dean Witter filed this lawsuit in Federal District Court. It asked the court to declare that the dispute was "ineligible for arbitration" because it was more than six years old. App. 45. And it sought an injunction that would prohibit Howsam from proceeding in arbitration. The District Court dismissed the action on the ground that the NASD arbitrator, not the court, should interpret and apply the NASD rule. The Court of Appeals for the Tenth Circuit, however, reversed. 261 F. 3d 956 (2001). In its view, application of the NASD rule presented a question of the underlying dispute's "arbitrability"; and the presumption is that a court, not an arbitrator, will ordinarily decide an "arbitrability" question. See, *e. g.*, *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938 (1995).

The Courts of Appeals have reached different conclusions about whether a court or an arbitrator primarily should interpret and apply this particular NASD rule. Compare, *e. g.*, 261 F. 3d 956 (CA10 2001) (case below) (holding that the question is for the court); *J. E. Liss & Co.* v. *Levin*, 201 F. 3d 848, 851 (CA7 2000) (same), with *PaineWebber Inc.* v. *Elahi*, 87 F. 3d 589 (CA1 1996) (holding that NASD § 15, currently § 10304, is presumptively for the arbitrator); *Smith Barney Shearson, Inc.* v. *Boone*, 47 F. 3d 750 (CA5 1995) (same). We

granted Howsam's petition for certiorari to resolve this disagreement. And we now hold that the matter is for the arbitrator.

II

This Court has determined that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582 (1960); see also *First Options*, *supra*, at 942–943. Although the Court has also long recognized and enforced a "liberal federal policy favoring arbitration agreements," *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24–25 (1983), it has made clear that there is an exception to this policy: The question whether the parties have submitted a particular dispute to arbitration, *i. e.*, the "*question of arbitrability*," is "an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise." *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U. S. 643, 649 (1986) (emphasis added); *First Options*, *supra*, at 944. We must decide here whether application of the NASD time limit provision falls into the scope of this last-mentioned interpretive rule.

Linguistically speaking, one might call any potentially dispositive gateway question a "question of arbitrability," for its answer will determine whether the underlying controversy will proceed to arbitration on the merits. The Court's case law, however, makes clear that, for purposes of applying the interpretive rule, the phrase "question of arbitrability" has a far more limited scope. See 514 U. S., at 942. The Court has found the phrase applicable in the kind of narrow circumstance where contracting parties would likely have expected a court to have decided the gateway matter, where they are not likely to have thought that they had agreed that an arbitrator would do so, and, consequently, where reference of the gateway dispute to the court avoids the risk of

forcing parties to arbitrate a matter that they may well not have agreed to arbitrate.

Thus, a gateway dispute about whether the parties are bound by a given arbitration clause raises a "question of arbitrability" for a court to decide. See *id.*, at 943–946 (holding that a court should decide whether the arbitration contract bound parties who did not sign the agreement); *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543, 546–547 (1964) (holding that a court should decide whether an arbitration agreement survived a corporate merger and bound the resulting corporation). Similarly, a disagreement about whether an arbitration clause in a concededly binding contract applies to a particular type of controversy is for the court. See, *e. g.*, *AT&T Technologies*, *supra*, at 651–652 (holding that a court should decide whether a labor-management layoff controversy falls within the arbitration clause of a collective-bargaining agreement); *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238, 241–243 (1962) (holding that a court should decide whether a clause providing for arbitration of various "grievances" covers claims for damages for breach of a no-strike agreement).

At the same time the Court has found the phrase "question of arbitrability" *not* applicable in other kinds of general circumstance where parties would likely expect that an arbitrator would decide the gateway matter. Thus "'procedural' questions which grow out of the dispute and bear on its final disposition" are presumptively *not* for the judge, but for an arbitrator, to decide. *John Wiley*, *supra*, at 557 (holding that an arbitrator should decide whether the first two steps of a grievance procedure were completed, where these steps are prerequisites to arbitration). So, too, the presumption is that the arbitrator should decide "allegation[s] of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Memorial Hospital*, *supra*, at 24–25. Indeed, the Revised Uniform Arbitration Act of 2000 (RUAA), seeking to "incorpo-

rate the holdings of the vast majority of state courts and the law that has developed under the [Federal Arbitration Act]," states that an "arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled." RUAA § 6(c), and comment 2, 7 U. L. A. 12–13 (Supp. 2002). And the comments add that "in the absence of an agreement to the contrary, issues of substantive arbitrability . . . are for a court to decide and issues of procedural arbitrability, *i. e.*, whether prerequisites such as *time limits,* notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide." *Id.*, § 6, comment 2, 7 U. L. A., at 13 (emphasis added).

Following this precedent, we find that the applicability of the NASD time limit rule is a matter presumptively for the arbitrator, not for the judge. The time limit rule closely resembles the gateway questions that this Court has found not to be "questions of arbitrability." *E. g.*, *Moses H. Cone Memorial Hospital*, *supra*, at 24–25 (referring to "waiver, delay, or a like defense"). Such a dispute seems an "aspec[t] of the [controversy] which called the grievance procedures into play." *John Wiley*, *supra*, at 559.

Moreover, the NASD arbitrators, comparatively more expert about the meaning of their own rule, are comparatively better able to interpret and to apply it. In the absence of any statement to the contrary in the arbitration agreement, it is reasonable to infer that the parties intended the agreement to reflect that understanding. Cf. *First Options*, 514 U. S., at 944–945. And for the law to assume an expectation that aligns (1) decisionmaker with (2) comparative expertise will help better to secure a fair and expeditious resolution of the underlying controversy—a goal of arbitration systems and judicial systems alike.

We consequently conclude that the NASD's time limit rule falls within the class of gateway procedural disputes that do not present what our cases have called "questions of arbi-

trability." And the strong pro-court presumption as to the parties' likely intent does not apply.

III

Dean Witter argues that, in any event, *i. e.*, even without an antiarbitration presumption, we should interpret the contracts between the parties here as calling for judicial determination of the time limit matter. Howsam's execution of a Uniform Submission Agreement with the NASD in 1997 effectively incorporated the NASD Code into the parties' agreement. Dean Witter notes the Code's time limit rule uses the word "eligible." That word, in Dean Witter's view, indicates the parties' intent for the time limit rule to be resolved by the court prior to arbitration.

We do not see how that is so. For the reasons stated in Part II, *supra*, parties to an arbitration contract would normally expect a forum-based decisionmaker to decide forum-specific procedural gateway matters. And any temptation here to place special antiarbitration weight on the appearance of the word "eligible" in the NASD Code rule is counterbalanced by a different NASD rule; that rule states that "arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code." NASD Code § 10324.

Consequently, without the help of a special arbitration-disfavoring presumption, we cannot conclude that the parties intended to have a court, rather than an arbitrator, interpret and apply the NASD time limit rule. And as we held in Part II, *supra*, that presumption does not apply.

IV

For these reasons, the judgment of the Tenth Circuit is

Reversed.

JUSTICE O'CONNOR took no part in the consideration or decision of this case.

JUSTICE THOMAS, concurring in the judgment.

As our precedents make clear and as the Court notes, arbitration is a matter of contract. *Ante*, at 83. In *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468 (1989), we held that under the Federal Arbitration Act courts must enforce private agreements to arbitrate just as they would ordinary contracts: in accordance with their terms. Under *Volt*, when an arbitration agreement contains a choice-of-law provision, that provision must be honored, and a court interpreting the agreement must follow the law of the jurisdiction selected by the parties. See *id.*, at 478–479 (enforcing a choice-of-law provision that incorporated a state procedural rule concerning arbitration proceedings); see also *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 67 (1995) (THOMAS, J., dissenting) (concluding that the choice-of-law provision in question was indistinguishable from the one in *Volt* and, thus, should have been given effect). A straightforward application of these principles easily resolves the question presented in this case.

The agreement now before us provides that it "shall be construed and enforced in accordance with the laws of the State of New York." App. 6. Interpreting two agreements containing provisions virtually identical to the ones in dispute here, the New York Court of Appeals held that issues implicating § 15 (now § 10304) of the National Association of Securities Dealers Code of Arbitration Procedure are for arbitrators to decide. See *Smith Barney Shearson Inc.* v. *Sacharow*, 91 N. Y. 2d 39, 689 N. E. 2d 884 (1997). Because the parties agreed to be bound by New York law and because *Volt* requires us to enforce their agreement, I would permit arbitrators to resolve the § 10304 issues that have arisen in this case, just as New York case law provides. The Court follows a different route to reach the same conclusion; accordingly, I concur only in the judgment.

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ABDUR'RAHMAN *v.* BELL, WARDEN

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

No. 01–9094. Argued November 6, 2002—Decided December 10, 2002

Certiorari dismissed.

James S. Liebman argued the cause for petitioner. With him on the briefs were *Thomas C. Goldstein*, by appointment of the Court, 537 U. S. 809, *Amy Howe*, *William P. Redick, Jr.*, and *Bradley MacLean*.

Paul G. Summers, Attorney General of Tennessee, argued the cause for respondent. With him on the brief were *Michael E. Moore*, Solicitor General, *Joseph F. Whalen*, Assistant Attorney General, and *Gordon W. Smith*, Associate Solicitor General.

Paul J. Zidlicky argued the cause for the State of Alabama et al. as *amici curiae* urging affirmance. With him on the brief were *Bill Pryor*, Attorney General of Alabama, and *Nathan A. Forrester*, Solicitor General, *John M. Bailey*, Chief State's Attorney of Connecticut, *Carter G. Phillips*, *Gene C. Schaerr*, and the Attorneys General for their respective States as follows: *Janet Napolitano* of Arizona, *Mark Lunsford Pryor* of Arkansas, *Bill Lockyer* of California, *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Thurbert E. Baker* of Georgia, *Alan G. Lance* of Idaho, *James E. Ryan* of Illinois, *Steve Carter* of Indiana, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *Thomas F. Reilly* of Massachusetts, *Mike McGrath* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *David Samson* of New Jersey, *Wayne Stenehjem* of North Dakota, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, *Mark Barnett* of South Dakota, *John Cornyn* of Texas, *Mark L.*

Shurtleff of Utah, *Jerry W. Kilgore* of Virginia, *Christine O. Gregoire* of Washington, and *Darrell V. McGraw, Jr.*, of West Virginia.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

JUSTICE STEVENS, dissenting.

The Court's decision to dismiss the writ of certiorari as improvidently granted presumably is motivated, at least in part, by the view that the jurisdictional issues presented by this case do not admit of an easy resolution.[1] I do not share that view. Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings. I therefore respectfully dissent from the Court's disposition of the case.

I

In 1988 the Tennessee Supreme Court affirmed petitioner's conviction and his death sentence. His attempts to ob-

*Briefs of *amici curiae* urging reversal were filed for James F. Neal et al. by *Elizabeth G. Taylor* and *Ronald H. Weich;* and for the National Association of Criminal Defense Lawyers by *Deanne E. Maynard*, *Donald B. Verrilli, Jr.*, *Lisa B. Kemler*, and *Edward M. Chikofsky.*

A brief of *amicus curiae* urging affirmance was filed for the Criminal Justice Legal Foundation by *Kent S. Scheidegger.*

[1] On October 24, 2002, just two weeks before oral argument, the Court entered an order directing the parties to file supplemental briefs addressing these two questions: "Did the Sixth Circuit have jurisdiction to review the District Court's order, dated November 27, 2001, transferring petitioner's Rule 60(b) motion to the Sixth Circuit pursuant to 28 U. S. C. § 1631? Does this Court have jurisdiction to review the Sixth Circuit's order, dated February 11, 2002, denying leave to file a second habeas corpus petition?" *Post*, p. 996.

tain postconviction relief in the state court system were unsuccessful. In 1996 he filed an application for a writ of habeas corpus in the Federal District Court advancing several constitutional claims, two of which raised difficult questions. The first challenged the competency of his trial counsel and the second made serious allegations of prosecutorial misconduct. After hearing extensive evidence on both claims, on April 8, 1998, the District Court entered an order granting relief on the first claim, but holding that the second was procedurally barred because it had not been fully exhausted in the state courts. *Abdur'Rahman* v. *Bell*, 999 F. Supp. 1073 (MD Tenn. 1998). The procedural bar resulted from petitioner's failure to ask the Supreme Court of Tennessee to review the lower state courts' refusal to grant relief on the prosecutorial misconduct claim. *Id.*, at 1080–1083.

The District Court's ruling that the claim had not been fully exhausted appeared to be correct under Sixth Circuit precedent[2] and it was consistent with this Court's later holding in *O'Sullivan* v. *Boerckel*, 526 U. S. 838 (1999). In response to our decision in *O'Sullivan*, however, the Tennessee Supreme Court on June 28, 2001, adopted a new rule that changed the legal landscape. See In re: Order Establishing Rule 39, Rules of the Supreme Court of Tennessee: Exhaustion of Remedies. App. 278. That new rule made it perfectly clear that the District Court's procedural bar holding was, in fact, erroneous.[3]

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[2] See *Silverburg* v. *Evitts*, 993 F. 2d 124 (CA6 1993). Other Circuits had held that the exhaustion requirement may be satisfied without seeking discretionary review in a State's highest court. See, *e. g.*, *Dolny* v. *Erickson*, 32 F. 3d 381 (CA8 1994); *Boerckel* v. *O'Sullivan*, 135 F. 3d 1194 (CA7 1998).

[3] Tennessee Supreme Court Rule 39 reads, in relevant part: "In all appeals from criminal convictions or post-conviction relief matters from and after July 1, 1967, a litigant shall not be required to petition for rehearing or to file an application for permission to appeal to the Supreme Court of Tennessee following an adverse decision of the Court of Criminal Appeals in order to be deemed to have exhausted all available state remedies

The warden appealed from the District Court's order granting the writ, but petitioner did not appeal the ruling that his prosecutorial misconduct claim was procedurally barred. The Court of Appeals set aside the District Court's grant of relief to petitioner, 226 F. 3d 696 (CA6 2000), and we denied his petition for certiorari on October 9, 2001, 534 U. S. 970. The proceedings that were thereafter initiated raised the questions the Court now refuses to decide.

On November 2, 2001, petitioner filed a motion, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure,[4] seeking relief from the District Court judgment entered on April 8, 1998. The motion did not assert any new constitutional claims and did not rely on any newly discovered evidence. It merely asked the District Court to set aside its 1998 order terminating the habeas corpus proceeding and to decide the merits of the prosecutorial misconduct claim that had been held to be procedurally barred. The motion relied on the

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respecting a claim of error. Rather, when the claim has been presented to the Court of Criminal Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies available for that claim." This type of action by the Tennessee Court was anticipated—indeed, invited—by the concurring opinion in *O'Sullivan* v. *Boerckel*, 526 U. S. 838, 849–850 (1999) (opinion of SOUTER, J.).

[4] Federal Rule of Civil Procedure 60(b) provides, in part: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment . . . upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

ground that the Tennessee Supreme Court's new Rule 39 demonstrated that the District Court's procedural bar ruling had been based on a mistaken premise.

Relying on Sixth Circuit precedent,[5] on November 27, 2001, the District Court entered an order that: (1) characterized the motion as a "second or successive habeas corpus application" governed by 28 U. S. C. § 2244; (2) held that the District Court was therefore without jurisdiction to decide the motion;[6] and (3) transferred the case to the Court of Appeals pursuant to § 1631.[7]

Petitioner sought review of that order in both the District Court and the Court of Appeals. In the District Court, petitioner filed a notice of appeal and requested a certificate of appealability. See Civil Docket for Case No. 96–CV–380 (MD Tenn., Apr. 23, 1996), App. 11. In the Court of Appeals, petitioner filed the notice of appeal, again sought a certificate of appealability, and moved the court to consolidate the appeal of the District Court's Rule 60(b) ruling with his pre-

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[5] *McQueen* v. *Scroggy*, 99 F. 3d 1302, 1335 (CA6 1996) ("We agree with those circuits that have held that a Rule 60(b) motion is the practical equivalent of a successive habeas corpus petition . . .").

[6] Title 28 U. S. C. § 2244(b)(ii)(3)(A) provides: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

[7] Section 1631 provides: "Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred." Under Sixth Circuit precedent, a district court presented with a "second or successive" habeas application must transfer it to the Court of Appeals pursuant to that section. See *In re Sims*, 111 F. 3d 45 (CA6 1997).

existing appeal of his original federal habeas petition. *Id.*, at 28. On January 18, 2002, the Court of Appeals entered an order that endorsed the District Court's disposition of the Rule 60(b) motion, specifically including its characterization of the motion as a successive habeas petition. Nos. 98–6568/6569, 01–6504 (CA6), p. 2, App. 35, 36. In that order the Court of Appeals stated that the "district court properly found that a Rule 60(b) motion is the equivalent of a successive habeas corpus petition," and then held that Abdur'Rahman's petition did not satisfy the gateway criteria set forth in § 2244(b)(2) for the filing of such a petition. *Ibid.* It concluded that "all relief requested to this panel is denied." *Id.*, at 37. In a second order, entered on February 11, 2002, Nos. 98–6568/6569, 01–6504 (CA6), *id.*, at 38, the Court of Appeals referred to additional filings by petitioner and denied them all.[8]

Thereafter we stayed petitioner's execution and granted his petition for certiorari to review the Court of Appeals' disposition of his Rule 60(b) motion.[9] 535 U. S. 1016 (2002).

II

The answer to the jurisdictional questions that we asked the parties to address depends on whether the motion that petitioner filed on November 2, 2001, was properly styled as

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[8] One paragraph in that order reads as follows: "The order construing an ostensible Rule 60(b) motion as an application for leave to file a second habeas corpus petition . . . is not an appealable order in No. 01–6504, which is therefore DISMISSED for lack of jurisdiction." App. 39.

[9] The two questions presented in the certiorari petition read as follows: "1. Whether the Sixth Circuit erred in holding, in square conflict with decisions of this Court and of other circuits, that every Rule 60(b) Motion constitutes a prohibited 'second or successive' habeas petition as a matter of law.

"2. Whether a court of appeals abuses its discretion in refusing to permit consideration of a vital intervening legal development when the failure to do so precludes a habeas petitioner from ever receiving any adjudication of his claims on the merits." Pet. for Cert.

a Rule 60(b) motion, or was actually an application to file a second or successive habeas corpus petition, as the Court of Appeals held. If it was the latter, petitioner clearly failed to follow the procedure specified in 28 U. S. C. § 2244(b)(3)(A).[10] On the other hand, it is clear that if the motion was a valid Rule 60(b) filing, the Court of Appeals had jurisdiction to review the District Court's denial of relief—either because that denial was a final order from which petitioner filed a timely appeal, or because the District Court had transferred the matter to the Court of Appeals pursuant to § 1631.[11] In either event the issue was properly before the Court of Appeals, and—since the jurisdictional bar in § 2244(b)(3)(E) does not apply to Rule 60(b) motions—we certainly have jurisdiction to review the orders that the Court of Appeals entered on January 18 and February 11, 2002. Thus, in order to resolve both the jurisdictional issues and the questions presented in the certiorari petition, it is necessary to identify the difference, if any, between a Rule 60(b) motion and a second or successive habeas corpus application.

As Judge Tjoflat explained in a recent opinion addressing that precise issue, the difference is defined by the relief that the applicant seeks. Is he seeking relief from a federal court's final order entered in a habeas proceeding on one or more of the grounds set forth in Rule 60(b), or is he seeking relief from a state court's judgment of conviction on the basis of a new constitutional claim? Referring to the difference

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[10] Section 2244(b)(3)(A) provides: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Petitioner filed no such motion.

[11] It is of particular importance that petitioner filed his notice of appeal in both the Court of Appeals and the District Court. Regardless of whether the District Court's transfer order divested that court of jurisdiction to conduct further proceedings, petitioner challenged the specific characterization of his Rule 60(b) motion before the two possible courts that could hear his claim.

between a Rule 60(b) motion and a "second or successive" habeas corpus petition, Judge Tjoflat wrote:

> "The distinction lies in the harm each is designed to cure. A 'second or successive' habeas corpus petition, as discussed above, is meant to address two specific types of constitutional claims by prisoners: (1) claims that 'rel[y] on a new rule of constitutional law,' and (2) claims that rely on a rule of constitutional law and are based on evidence that 'could not have been discovered previously through the exercise of due diligence' and would establish the petitioner's factual innocence. 28 U. S. C. § 2244(b)(3)(A). Neither of these types of claims challenges the district court's previous denial of relief under 28 U. S. C. § 2254. Instead, each alleges that the contextual circumstances of the proceeding have changed so much that the petitioner's conviction or sentence now runs afoul of the Constitution.
>
> "In contrast, a motion for relief under Rule 60 of the Federal Rules of Civil Procedure contests the integrity of the proceeding that resulted in the district court's judgment.
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> . . . . .
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> "When a habeas corpus petitioner moves for relief under, for example, Rule 60(b)(3), he is impugning the integrity of the district court's judgment rejecting his petition on the ground that the State obtained the judgment by fraud. Asserting this claim is quite different from contending, as the petitioner would in a successive habeas corpus petition, that his conviction or sentence was obtained 'in violation of the Constitution or laws or treaties of the United States.' 28 U. S. C. § 2254(a).
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> "In sum, a 'second or successive' habeas corpus petition, like all habeas corpus petitions, is meant to remedy constitutional violations (albeit ones which arise out of facts discovered or laws evolved after an initial habeas corpus proceeding), while a Rule 60(b) motion is de-

> signed to cure procedural violations in an earlier proceeding—here, a habeas corpus proceeding—that raise questions about that proceeding's integrity.
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> . . . . .
>
> "As a final note, I would add that this rule is not just consistent with case law, but it also comports with the fair and equitable administration of justice. If, for example, a death row inmate could show that the State indeed committed fraud upon the district court during his habeas corpus proceeding, it would be a miscarriage of justice if we turned a blind eye to such abuse of the judicial process. Nevertheless, this is the result that would occur if habeas corpus petitioners' Rule 60(b) motions were always considered 'second or successive' habeas corpus petitions. After all, a claim of prosecutorial fraud does not rely on 'a new rule of constitutional law' and may not 'establish by clear and convincing evidence that . . . no reasonable factfinder would have found the applicant guilty of the underlying offense.' 28 U. S. C. § 2244(b)(2). It is a claim that nonetheless must be recognized." *Mobley* v. *Head*, 306 F. 3d 1096, 1100–1105 (CA11 2002) (dissenting opinion).

Judge Tjoflat's reasoning is fully consistent with this Court's decisions in *Stewart* v. *Martinez-Villareal*, 523 U. S. 637 (1998), and *Slack* v. *McDaniel*, 529 U. S. 473 (2000). Applying that reasoning to the present case, it is perfectly clear that the petitioner *filed* a proper Rule 60(b) motion. (Whether it should have been granted is a different question.) The motion did not purport to set forth the basis for a second or successive challenge to the state-court judgment of conviction. It did, however, seek relief from the final order entered by the federal court in the habeas proceeding, and it relied on grounds that are either directly or indirectly identified in Rule 60(b) as possible bases for such relief. Essentially it submitted that the "changes in the . . . legal land-

scape," *Agostini* v. *Felton*, 521 U. S. 203, 215 (1997), effected by Tennessee's new rule demonstrated that the District Court's procedural bar ruling rested on a mistaken premise. In petitioner's view, that mistake constituted a "reason justifying relief from the operation of the judgment" within the meaning of Rule 60(b)(6). Whether one ultimately agrees or disagrees with that submission, it had sufficient arguable merit to persuade at least four Members of this Court to grant his certiorari petition.

III

In the District Court petitioner filed a comprehensive memorandum supporting his submission that his Rule 60(b) motion should be granted. App. 171–267. He has argued that the evidence already presented to the court proves that the prosecutor was guilty of serious misconduct; that affidavits executed by eight members of the jury that sentenced him to death establish that they would have not voted in favor of the death penalty if they had known the facts that the prosecutor improperly withheld or concealed from them; and that it is inequitable to allow an erroneous procedural ruling to deprive him of a ruling on the merits. In this Court, a brief filed by former prosecutors as *amici curiae* urges us to address the misconduct claim, stressing the importance of condemning the conduct disclosed by the record.[12] Arguably it would be appropriate for us to do so in order to answer the second question presented in the certiorari petition. In my opinion, however, correct procedure requires that the merits of the Rule 60(b) motion be addressed in the first instance by the District Court.

The District Court has already heard the extensive evidence relevant to the prosecutorial misconduct claim, as well as the evidence that persuaded both the Tennessee appellate court and two federal courts that petitioner's trial counsel

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[12] See Brief for James F. Neal et al. as *Amici Curiae* 24.

was ineffective (relief was denied on this claim based on a conclusion that counsel's ineffectiveness did not affect the outcome of the trial). That court is, therefore, in the best position to evaluate the equitable considerations that may be taken into account in ruling on a Rule 60(b) motion. Moreover, simply as a matter of orderly procedure, the court in which the motion was properly filed is the one that should first evaluate its merits.

The Court of Appeals for the Sixth Circuit plainly erred when it characterized petitioner's Rule 60(b) motion as an application for a second or successive habeas petition and denied relief for that reason. The "federalism" concerns that motivated this Court's misguided decisions in *Coleman* v. *Thompson*, 501 U. S. 722 (1991),[13] and *O'Sullivan* v. *Boerckel*, 526 U. S. 838 (1999), do not even arguably support the Sixth Circuit's disposition of petitioner's motion. I would therefore vacate the orders that that court entered on January 18 and February 11, 2002, and remand the case to that court with instructions to direct the District Court to rule on the merits of the Rule 60(b) motion.

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[13] "This is a case about federalism." 501 U. S., at 726.

Syllabus

BORDEN RANCH PARTNERSHIP ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL.

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

No. 01–1243. Argued December 10, 2002—Decided December 16, 2002

261 F. 3d 810, affirmed by an equally divided Court.

Timothy S. Bishop argued the cause for petitioners. With him on the briefs were *Arthur F. Coon*, *Kyriakos Tsakopoulos*, and *Edmund L. Regalia.*

Jeffrey P. Minear argued the cause for respondents. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Sansonetti*, *Deputy Solicitor General Wallace*, *David C. Shilton*, and *Sylvia Quast.**

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *William H. Pryor, Jr.*, Attorney General of Alabama, *Nathan A. Forrester*, Solicitor General, and *Alyce S. Robertson*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *James E. Ryan* of Illinois, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *Don Stenberg* of Nebraska, *Betty D. Montgomery* of Ohio, *D. Michael Fisher* of Pennsylvania, *John Cornyn* of Texas, and *Jerry W. Kilgore* of Virginia; for the American Farm Bureau Federation et al. by *John J. Rademacher;* for the American Forest & Paper Association by *Steven P. Quarles*, *J. Michael Klise*, *Ellen B. Steen*, and *William R. Murray;* for the California Farm Bureau Federation et al. by *Robin L. Rivett* and *M. Reed Hopper;* for the National Association of Home Builders by *Virginia S. Albrecht*, *Andrew J. Turner*, *Duane J. Desiderio*, and *Thomas Jon Ward;* for the National Stone, Sand and Gravel Association et al. by *Lawrence R. Liebesman;* and for Save Our Shoreline by *Nancie G. Marzulla*, *Roger J. Marzulla*, *Brenda D. Colella*, and *David L. Powers.*

Briefs of *amici curiae* urging affirmance were filed for the State of New Jersey et al. by *David Samson*, Attorney General of New Jersey, and *Patrick DeAlmeida* and *Rachel J. Horowitz*, Deputy Attorneys General, and by the Attorneys General for their respective States as follows: *Earl I. Anzai* of Hawaii and *Darrell V. McGraw, Jr.*, of West Virginia; for the

PER CURIAM.

The judgment is affirmed by an equally divided Court.

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

Association of State Wetlands Managers by *Patrick A. Parenteau;* for the National Wildlife Federation et al. by *Howard I. Fox;* and for Dr. Joy Zedler et al. by *John D. Echeverria.*

Syllabus

SATTAZAHN *v.* PENNSYLVANIA

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

No. 01–7574. Argued November 4, 2002—Decided January 14, 2003

Under Pennsylvania law, (1) the verdict in the penalty phase of capital proceedings must be death if the jury unanimously finds at least one aggravating circumstance and no mitigating circumstance or one or more aggravating circumstances outweighing any mitigating circumstances, but it must be life imprisonment in all other instances; and (2) the court may discharge a jury if it determines that the jury will not unanimously agree on the sentence, but the court must then enter a life sentence. When petitioner's penalty-phase jury reported to the trial judge that it was hopelessly deadlocked 9-to-3 for life imprisonment, the court discharged the jury and entered a life sentence. On appeal, the Pennsylvania Superior Court reversed petitioner's first-degree murder conviction and remanded for a new trial. At the second trial, Pennsylvania again sought the death penalty and the jury again convicted petitioner, but this time the jury imposed a death sentence. In affirming, the Pennsylvania Supreme Court found that neither the Fifth Amendment's Double Jeopardy Clause nor the Fourteenth Amendment's Due Process Clause barred Pennsylvania from seeking the death penalty at the retrial.

Held:

1. There was no double-jeopardy bar to Pennsylvania's seeking the death penalty on retrial. Pp. 106–110, 113–115.

(a) Where, as here, a defendant who is convicted of murder and sentenced to life imprisonment succeeds in having the conviction set aside on appeal, jeopardy has not terminated, so that a life sentence imposed in connection with the initial conviction raises no double-jeopardy bar to a death sentence on retrial. *Stroud* v. *United States*, 251 U. S. 15. While, in the line of cases commencing with *Bullington* v. *Missouri*, 451 U. S. 430, this Court has found that the Double Jeopardy Clause applies to capital-sentencing proceedings that "have the hallmarks of the trial on guilt or innocence," *id.*, at 439, the relevant inquiry in that context is not whether the defendant received a life sentence the first time around, but whether a first life sentence was an "acquittal" based on findings sufficient to establish legal entitlement to the life sentence—*i. e.*, findings that the government failed to prove one or more aggravating circumstances beyond a reasonable doubt, *Arizona* v. *Rumsey*, 467 U. S. 203, 211. Pp. 106–109.

Syllabus

(b) Double-jeopardy protections were not triggered when the jury deadlocked at petitioner's first sentencing proceeding and the court prescribed a life sentence pursuant to Pennsylvania law. The jury in that first proceeding was deadlocked and made no findings with respect to the alleged aggravating circumstance. That result, or nonresult, cannot fairly be called an acquittal, based on findings sufficient to establish legal entitlement to a life sentence. Neither was the entry of a life sentence by the judge an "acquittal." Under Pennsylvania's scheme, a judge has no discretion to fashion a sentence once he finds the jury is deadlocked, and he makes no findings and resolves no factual matters. The Pennsylvania Supreme Court also made no finding that the Pennsylvania Legislature intended the statutorily required entry of a life sentence to create an "entitlement" even without an "acquittal." Pp. 109–110.

(c) Dictum in *United States* v. *Scott*, 437 U. S. 82, 92, does not support the proposition that double jeopardy bars retrial when a defendant's case has been fully tried and the court on its own motion enters a life sentence. The mere prospect of a second capital-sentencing proceeding does not implicate the perils against which the Double Jeopardy Clause seeks to protect. Pp. 113–115.

2. The Due Process Clause also did not bar Pennsylvania from seeking the death penalty at the retrial. Nothing in § 1 of the Fourteenth Amendment indicates that any "life" or "liberty" interest that Pennsylvania law may have given petitioner in the first proceeding's life sentence was somehow immutable, and he was "deprived" of any such interest only by operation of the "process" he invoked to invalidate the underlying first-degree murder conviction. This Court declines to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause. Pp. 115–116.

563 Pa. 533, 763 A. 2d 359, affirmed.

SCALIA, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, IV, and V, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and an opinion with respect to Part III, in which REHNQUIST, C. J., and THOMAS, J., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 116. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post*, p. 118.

Robert Brett Dunham argued the cause for petitioner. With him on the briefs were *Anne L. Saunders* and *John T. Adams.*

Iva C. Dougherty argued the cause for respondent. With her on the brief were *Mark C. Baldwin* and *Alisa R. Hobart.*

Sri Srinivasan argued the cause *pro hac vice* for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Chertoff*, *Deputy Solicitor General Dreeben*, and *Robert J. Erickson.*

JUSTICE SCALIA announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, IV, and V, and an opinion with respect to Part III, in which THE CHIEF JUSTICE and JUSTICE THOMAS join.*

In this case, we consider once again the applicability of the Fifth Amendment's Double Jeopardy Clause in the context of capital-sentencing proceedings.

I

On Sunday evening, April 12, 1987, petitioner David Allen Sattazahn and his accomplice, Jeffrey Hammer, hid in a wooded area waiting to rob Richard Boyer, manager of the Heidelberg Family Restaurant. Sattazahn carried a .22-caliber Ruger semiautomatic pistol and Hammer a .41-caliber revolver. They accosted Boyer in the restaurant's parking lot at closing time. With guns drawn, they demanded the bank deposit bag containing the day's receipts. Boyer threw the bag toward the roof of the restaurant. Petitioner commanded Boyer to retrieve the bag, but instead of complying Boyer tried to run away. Both petitioner and Hammer fired shots, and Boyer fell dead. The two men then grabbed the deposit bag and fled.

The Commonwealth of Pennsylvania prosecuted petitioner and sought the death penalty. On May 10, 1991, a jury returned a conviction of first-, second-, and third-degree murder, and various other charges. In accordance with Penn-

*JUSTICE KENNEDY joins all but Part III of this opinion.

sylvania law the proceeding then moved into a penalty phase. See Pa. Stat. Ann., Tit. 18, § 1102(a)(1) (Purdon 1998); Pa. Stat. Ann., Tit. 42, § 9711(a)(1) (Purdon Supp. 2002). The Commonwealth presented evidence of one statutory aggravating circumstance: commission of the murder while in the perpetration of a felony. See § 9711(d)(6). Petitioner presented as mitigating circumstances his lack of a significant history of prior criminal convictions and his age at the time of the crime. See §§ 9711(e)(1), (4). 563 Pa. 533, 539, 763 A. 2d 359, 362 (2000).

Pennsylvania law provides that, in the penalty phase of capital proceedings:

> "(iv) the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance . . . and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.
>
> "(v) the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment." § 9711(c) (Purdon Supp. 2002).

After both sides presented their evidence, the jury deliberated for some 3½ hours, App. 23, after which it returned a note signed by the foreman which read: "We, the jury are hopelessly deadlocked at 9-3 for life imprisonment. Each one is deeply entrenched in their *[sic]* position. We do not expect anyone to change his or her position." *Id.*, at 25. Petitioner then moved "under 9711(c), subparagraph 1, subparagraph Roman Numeral 5, that the jury be discharged and that [the court] enter a sentence of life imprisonment." *Id.*, at 22. The trial judge, in accordance with Pennsylvania

law, discharged the jury as hung, and indicated that he would enter the required life sentence, *id.*, at 23–24, which he later did, *id.*, at 30–33.

Petitioner appealed to the Pennsylvania Superior Court. That court concluded that the trial judge had erred in instructing the jury in connection with various offenses with which petitioner was charged, including first-degree murder. It accordingly reversed petitioner's first-degree murder conviction and remanded for a new trial. *Commonwealth* v. *Sattazahn*, 428 Pa. Super. 413, 631 A. 2d 597 (1993).

On remand, Pennsylvania filed a notice of intent to seek the death penalty. In addition to the aggravating circumstance alleged at the first sentencing hearing, the notice also alleged a second aggravating circumstance, petitioner's significant history of felony convictions involving the use or threat of violence to the person. (This was based on guilty pleas to a murder, multiple burglaries, and a robbery entered after the first trial.) Petitioner moved to prevent Pennsylvania from seeking the death penalty and from adding the second aggravating circumstance on retrial. The trial court denied the motion, the Superior Court affirmed the denial, App. 73, and the Pennsylvania Supreme Court declined to review the ruling, *Commonwealth* v. *Sattazahn*, 547 Pa. 742, 690 A. 2d 1162 (1997). At the second trial, the jury again convicted petitioner of first-degree murder, but this time imposed a sentence of death.

On direct appeal, the Pennsylvania Supreme Court affirmed both the verdict of guilt and the sentence of death on retrial. 563 Pa., at 551, 763 A. 2d, at 369. Relying on its earlier decision in *Commonwealth* v. *Martorano*, 535 Pa. 178, 634 A. 2d 1063 (1993), the court concluded that neither the Double Jeopardy Clause nor the Due Process Clause barred Pennsylvania from seeking the death penalty at petitioner's retrial. 563 Pa., at 545–551, 763 A. 2d, at 366–369. We granted certiorari. 535 U. S. 926 (2002).

II

A

The Double Jeopardy Clause of the Fifth Amendment commands that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." Under this Clause, once a defendant is placed in jeopardy for an offense, and jeopardy terminates with respect to that offense, the defendant may neither be tried nor punished a second time for the same offense. *North Carolina* v. *Pearce*, 395 U. S. 711, 717 (1969). Where, as here, a defendant is convicted of murder and sentenced to life imprisonment, but appeals the conviction and succeeds in having it set aside, we have held that jeopardy has not terminated, so that the life sentence imposed in connection with the initial conviction raises no double-jeopardy bar to a death sentence on retrial. *Stroud* v. *United States*, 251 U. S. 15 (1919).

In *Stroud*, the only offense at issue was that of murder, and the sentence was imposed by a judge who did not have to make any further findings in order to impose the death penalty. *Id.*, at 18. In *Bullington* v. *Missouri*, 451 U. S. 430 (1981), however, we held that the Double Jeopardy Clause does apply to capital-sentencing proceedings where such proceedings "have the hallmarks of the trial on guilt or innocence." *Id.*, at 439. We identified several aspects of Missouri's sentencing proceeding that resembled a trial, including the requirement that the prosecution prove certain statutorily defined facts beyond a reasonable doubt to support a sentence of death. *Id.*, at 438. Such a procedure, we explained, "*explicitly requires* the jury to determine whether the prosecution has 'proved its case.'" *Id.*, at 444. Since, we concluded, a sentence of life imprisonment signifies that "'the jury has already acquitted the defendant of whatever was necessary to impose the death sentence,'" the Double Jeopardy Clause bars a State from seeking the death penalty on retrial. *Id.*, at 445 (quoting *State ex rel. Westfall*

v. *Mason*, 594 S. W. 2d 908, 922 (Mo. 1980) (Bardgett, C. J., dissenting)).

We were, however, careful to emphasize that it is not the mere imposition of a life sentence that raises a double-jeopardy bar. We discussed *Stroud*, a case in which a defendant who had been convicted of first-degree murder and sentenced to life imprisonment obtained a reversal of his conviction and a new trial when the Solicitor General confessed error. In *Stroud*, the Court unanimously held that the Double Jeopardy Clause did not bar imposition of the death penalty at the new trial. 251 U. S., at 17–18. What distinguished *Bullington* from *Stroud*, we said, was the fact that in *Stroud* "there was no separate sentencing proceeding at which the prosecution was required to prove—beyond a reasonable doubt or otherwise—additional facts in order to justify the particular sentence." *Bullington*, 451 U. S., at 439. We made clear that an "acquittal" at a trial-like sentencing phase, rather than the mere imposition of a life sentence, is required to give rise to double-jeopardy protections. *Id.*, at 446.

Later decisions refined *Bullington*'s rationale. In *Arizona* v. *Rumsey*, 467 U. S. 203 (1984), the State had argued in the sentencing phase, based on evidence presented during the guilt phase, that three statutory aggravating circumstances were present. The trial court, however, found that no statutory aggravator existed, and accordingly entered judgment in the accused's favor on the issue of death. On the State's cross-appeal, the Supreme Court of Arizona concluded that the trial court had erred in its interpretation of one of the statutory aggravating circumstances, and remanded for a new sentencing proceeding, which produced a sentence of death. *Id.*, at 205–206. In setting that sentence aside, we explained that "[t]he double jeopardy principle relevant to [Rumsey's] case is the same as that invoked in *Bullington:* an acquittal on the merits by the sole deci-

sionmaker in the proceeding is final and bars retrial on the same charge." *Id.*, at 211.

> "The trial court entered findings denying the existence of each of the seven statutory aggravating circumstances, and as required by state law, the court then entered judgment in respondent's favor on the issue of death. That judgment, *based on findings sufficient to establish legal entitlement to the life sentence*, amounts to an acquittal on the merits and, as such, bars any retrial of the appropriateness of the death penalty." *Ibid.* (emphasis added).

Rumsey thus reaffirmed that the relevant inquiry for double-jeopardy purposes was not whether the defendant received a life sentence the first time around, but rather whether a first life sentence was an "acquittal" based on findings sufficient to establish legal entitlement to the life sentence—*i. e.*, findings that the government failed to prove one or more aggravating circumstances beyond a reasonable doubt.

A later case in the line, *Poland* v. *Arizona*, 476 U. S. 147 (1986), involved two defendants convicted of first-degree murder and sentenced to death. On appeal the Arizona Supreme Court set aside the convictions (because of jury consideration of nonrecord evidence) and further found that there was insufficient evidence to support the one aggravating circumstance found by the trial court. It concluded, however, that there *was* sufficient evidence to support a *different* aggravating circumstance, which the trial court had thought not proved. The court remanded for retrial; the defendants were again convicted of first-degree murder, and a sentence of death was again imposed. *Id.*, at 149–150. We decided that in those circumstances, the Double Jeopardy Clause was *not* implicated. We distinguished *Bullington* and *Rumsey* on the ground that in *Poland*, unlike in those cases, neither the judge nor the jury had "acquitted" the de-

fendant in his first capital-sentencing proceeding by entering findings sufficient to establish legal entitlement to the life sentence. 476 U. S., at 155–157.

B

Normally, "a retrial following a 'hung jury' does not violate the Double Jeopardy Clause." *Richardson* v. *United States*, 468 U. S. 317, 324 (1984). Petitioner contends, however, that given the unique treatment afforded capital-sentencing proceedings under *Bullington*, double-jeopardy protections were triggered when the jury deadlocked at his first sentencing proceeding and the court prescribed a sentence of life imprisonment pursuant to Pennsylvania law.

We disagree. Under the *Bullington* line of cases just discussed, the touchstone for double-jeopardy protection in capital-sentencing proceedings is whether there has been an "acquittal." Petitioner here cannot establish that the jury or the court "acquitted" him during his first capital-sentencing proceeding. As to the jury: The verdict form returned by the foreman stated that the jury deadlocked 9-to-3 on whether to impose the death penalty; it made no findings with respect to the alleged aggravating circumstance. That result—or more appropriately, that non-result—cannot fairly be called an acquittal "based on findings sufficient to establish legal entitlement to the life sentence." *Rumsey*, *supra*, at 211.

The entry of a life sentence by the judge was not "acquittal," either. As the Pennsylvania Supreme Court explained:

> "'Under Pennsylvania's sentencing scheme, the judge has no discretion to fashion sentence once he finds that the jury is deadlocked. The statute directs him to enter a life sentence. 42 Pa. C. S. § 9711(c)(1)(v) (. . . if . . . further deliberation will not result in a unanimous agreement as to the sentence, . . . the court *shall* sentence the defendant to life imprisonment.) (emphasis added). The judge makes no findings and resolves no

> factual matter. Since judgment is not based on findings which resolve some factual matter, it is not sufficient to establish legal entitlement to a life sentence. A default judgment does not trigger a double jeopardy bar to the death penalty upon retrial.' " 563 Pa., at 548, 763 A. 2d, at 367 (quoting *Martorano*, 535 Pa., at 194, 634 A. 2d, at 1070).

It could be argued, perhaps, that the statutorily required entry of a life sentence creates an "entitlement" even without an "acquittal," because that is what the Pennsylvania Legislature intended—*i. e.*, it intended that the life sentence should survive vacation of the underlying conviction. The Pennsylvania Supreme Court, however, did not find such intent in the statute—and there was eminently good cause not to do so. A State's simple interest in closure might make it willing to accept the default penalty of life imprisonment when the conviction is affirmed and the case is, except for that issue, at an end—but unwilling to do so when the case must be retried anyway. And its interest in conservation of resources might make it willing to leave the sentencing issue unresolved (and the default life sentence in place) where the cost of resolving it is the empaneling of a new jury and, in all likelihood, a repetition of much of the guilt phase of the first trial—though it is eager to attend to that unfinished business if there is to be a new jury and a new trial anyway.

III

A

When *Bullington*, *Rumsey*, and *Poland* were decided, capital-sentencing proceedings were understood to be just that: *sentencing proceedings*. Whatever "hallmarks of [a] trial" they might have borne, *Bullington*, 451 U. S., at 439, they differed from trials in a respect crucial for purposes of the Double Jeopardy Clause: They dealt only with the *sentence* to be imposed for the "offence" of capital murder. Thus, in its search for a rationale to support *Bullington* and

its "progeny," the Court continually tripped over the text of the Double Jeopardy Clause.

Recent developments, however, have illuminated this part of our jurisprudence. Our decision in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), clarified what constitutes an "element" of an offense for purposes of the Sixth Amendment's jury-trial guarantee. Put simply, if the existence of any fact (other than a prior conviction) increases the maximum punishment that may be imposed on a defendant, that fact—no matter how the State labels it—constitutes an element, and must be found by a jury beyond a reasonable doubt. *Id.*, at 482–484, 490.

Just last Term we recognized the import of *Apprendi* in the context of capital-sentencing proceedings. In *Ring* v. *Arizona*, 536 U. S. 584 (2002), we held that aggravating circumstances that make a defendant eligible for the death penalty "operate as 'the functional equivalent of an element of a *greater offense.*' " *Id.*, at 609 (emphasis added). That is to say, for purposes of the Sixth Amendment's jury-trial guarantee, the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances": Whereas the former exposes a defendant to a maximum penalty of life imprisonment, the latter increases the maximum permissible sentence to death. Accordingly, we held that the Sixth Amendment requires that a jury, and not a judge, find the existence of any aggravating circumstances, and that they be found, not by a mere preponderance of the evidence, but beyond a reasonable doubt. *Id.*, at 608–609.

We can think of no principled reason to distinguish, in this context, between what constitutes an offense for purposes of the Sixth Amendment's jury-trial guarantee and what constitutes an "offence" for purposes of the Fifth Amendment's Double Jeopardy Clause. Cf. *Monge* v. *California*, 524 U. S. 721, 738 (1998) (SCALIA, J., dissenting) ("The fundamental distinction between facts that are *elements* of a criminal

offense and facts that go only to the *sentence*" not only "delimits the boundaries of . . . important constitutional rights, like the Sixth Amendment right to trial by jury," but also "provides the foundation for our entire double jeopardy jurisprudence"). In the post-*Ring* world, the Double Jeopardy Clause can, and must, apply to some capital-sentencing proceedings consistent with the text of the Fifth Amendment. If a jury unanimously concludes that a State has failed to meet its burden of proving the existence of one or more aggravating circumstances, double-jeopardy protections attach to that "acquittal" on the offense of "murder plus aggravating circumstance(s)." Thus, *Rumsey* was correct to focus on whether a factfinder had made findings that constituted an "acquittal" of the aggravating circumstances; but the reason that issue was central is not that a capital-sentencing proceeding is "comparable to a trial," 467 U. S., at 209 (citing *Bullington*, *supra*, at 438), but rather that "murder plus one or more aggravating circumstances" is a separate offense from "murder" *simpliciter*.

B

For purposes of the Double Jeopardy Clause, then, "first-degree murder" under Pennsylvania law—the offense of which petitioner was convicted during the guilt phase of his proceedings—is properly understood to be a lesser included offense of "first-degree murder plus aggravating circumstance(s)." See *Ring*, *supra*, at 609. Thus, if petitioner's first sentencing jury had unanimously concluded that Pennsylvania failed to prove any aggravating circumstances, that conclusion would operate as an "acquittal" of the greater offense—which would bar Pennsylvania from retrying petitioner on that greater offense (and thus, from seeking the death penalty) on retrial. Cf. *Rumsey*, *supra*, at 211.

But that is not what happened. Petitioner was convicted in the guilt phase of his first trial of the lesser offense of first-degree murder. During the sentencing phase, the jury

deliberated without reaching a decision on death or life, and without making any findings regarding aggravating or mitigating circumstances. After 3½ hours the judge dismissed the jury as hung and entered a life sentence in accordance with Pennsylvania law. As explained, *supra*, at 109–110, neither judge nor jury "acquitted" petitioner of the greater offense of "first-degree murder plus aggravating circumstance(s)." Thus, when petitioner appealed and succeeded in invalidating his conviction of the lesser offense, there was no double-jeopardy bar to Pennsylvania's retrying petitioner on both the lesser and the greater offense; his "jeopardy" never terminated with respect to either. Cf. *Green* v. *United States*, 355 U. S. 184, 189 (1957) (citing *United States* v. *Ball*, 163 U. S. 662 (1896)); *Selvester* v. *United States*, 170 U. S. 262, 269 (1898).

IV

The dissent reads the Court's decision in *United States* v. *Scott*, 437 U. S. 82 (1978), as supporting the proposition that where, as here, a defendant's "case was fully tried and the court, on its own motion, entered a final judgment—a life sentence—terminating the trial proceedings," *post*, at 126 (opinion of GINSBURG, J.), the Double Jeopardy Clause bars retrial. There are several problems with this reasoning.

First, it is an understatement to say that "*Scott* . . . did not home in on a case like [petitioner's]," *post*, at 123. The statement upon which the dissent relies—that double jeopardy "may" attach when the "trial judge terminates the proceedings favorably to the defendant on a basis not related to factual guilt or innocence," 437 U. S., at 92, at least where the defendant "had either been found not guilty *or* . . . *had at least insisted on having the issue of guilt submitted to the first trier of fact*," *id.*, at 96 (emphasis added)—was nothing more than dictum, and a tentative one ("may") at that. It would be a thin reed on which to rest a hitherto unknown constitutional prohibition of the entirely rational course of

making a hung jury's failure to convict provisionally final, subject to change if the case must be retried anyway.

Second, the dictum in *Scott* does not even embrace the present case. The petitioner here did not "insist" upon a merits determination, but to the contrary asked that the jury be dismissed as hung. As the dissent recognizes, when the jury announced that it was deadlocked, petitioner "move[d] 'that the jury be discharged' and that a life sentence be entered under [Pa. Stat. Ann., Tit. 42,] § 9711(c)(1)(v)." *Post*, at 125, n. 5. It is no response to say that "[t]he judge did not grant [the] motion," but instead made a legal determination whether petitioner was entitled to the judgment he sought. *Ibid.* Surely double-jeopardy protections cannot hinge on whether a trial court characterizes its action as self-initiated or in response to motion. Cf. *Scott*, *supra*, at 96. What actually happened in this case is the same as what happened in *Scott*, where we *denied* double-jeopardy protection: (1) the defendant moved for entry of a judgment in his favor on procedural grounds (there, delay in indictment; here, a hung jury); (2) the judge measured facts (there, the length of delay; here, the likelihood of the jury's producing a verdict) against a legal standard to determine whether such relief was appropriate; and (3) concluding that it was, granted the relief.

Nor, in these circumstances, does the prospect of a second capital-sentencing proceeding implicate any of the "perils against which the Double Jeopardy Clause seeks to protect." *Post*, at 124 (GINSBURG, J., dissenting). The dissent stresses that a defendant in such circumstances is "subject to the 'ordeal' of a second full-blown life or death trial," which "'compel[s] [him] to live in a continuing state of anxiety and insecurity.'" *Ibid.* (quoting *Green* v. *United States*, *supra*, at 187); see also *post*, at 127. But as even the dissent must admit, *post*, at 125, we have not found this concern determinative of double jeopardy in all circumstances. And it should not be so here. This case hardly presents the specter of "an

all-powerful state relentlessly pursuing a defendant who had either been found not guilty or who had at least insisted on having the issue of guilt submitted to the first trier of fact." *Scott*, *supra*, at 96. Instead, we see here a State which, for any number of perfectly understandable reasons, *supra*, at 110, has quite reasonably agreed to accept the default penalty of life imprisonment when the conviction is affirmed and the case is, except for that issue, at an end—but to pursue its not-yet-vindicated interest in "'one complete opportunity to convict those who have violated its laws'" where the case must be retried anyway, *post*, at 124 (quoting *Arizona* v. *Washington*, 434 U. S. 497, 509 (1978)).

V

In addition to his double-jeopardy claim, petitioner raises a freestanding claim alleging deprivation of due process in violation of the Fourteenth Amendment. He contends that, regardless of whether the imposition of the death sentence at the second trial violated the Double Jeopardy Clause, it unfairly deprived him of his "life" and "liberty" interests in the life sentence resulting from his first sentencing proceeding. He frames the argument in these terms:

> "Pennsylvania created a constitutionally protected life and liberty interest in the finality of the life judgment statutorily mandated as a result of a [deadlocked] jury. That right vested when the court found the jury deadlocked and imposed a mandatory life sentence. Subjecting [p]etitioner to a capital resentencing once that right has vested violated [D]ue [P]rocess." Reply Brief for Petitioner 18–19.

We think not. Section 1 of the Fourteenth Amendment commands that "[n]o State shall . . . deprive any person of life, liberty, or property, *without due process of law* . . . ." (Emphasis added.) Nothing indicates that any "life" or "liberty" interest that Pennsylvania law may have given peti-

tioner in the life sentence imposed after his first capital-sentencing proceeding was somehow immutable. And he was "deprived" of any such interest only by operation of the "process" he invoked to invalidate the underlying first-degree murder conviction on which it was based.

At bottom, petitioner's due-process claim is nothing more than his double-jeopardy claim in different clothing. As we have said:

> "The Bill of Rights speaks in explicit terms to many aspects of criminal procedure, and the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order." *Medina* v. *California*, 505 U. S. 437, 443 (1992).

We decline petitioner's invitation to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause.

* * *

The Pennsylvania Supreme Court correctly concluded that neither the Fifth Amendment's Double Jeopardy Clause nor the Fourteenth Amendment's Due Process Clause barred Pennsylvania from seeking the death penalty against petitioner on retrial. The judgment of that court is, therefore,

Affirmed.

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

I join Parts I, II, IV, and V of the Court's opinion in this case. I do not join Part III, which would further extend the reach of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), because I continue to believe that case was wrongly decided. See *id.*, at 523–553 (O'CONNOR, J., dissenting); see also *Ring*

v. *Arizona*, 536 U. S. 584, 619–620 (2002) (O'Connor, J., dissenting). It remains my view that "*Apprendi*'s rule that any fact that increases the maximum penalty must be treated as an element of the crime is not required by the Constitution, by history, or by our prior cases." *Id.*, at 619.

I would resolve petitioner's double jeopardy claim on the sole ground that under *Bullington* v. *Missouri*, 451 U. S. 430 (1981), and its progeny a life sentence imposed by operation of law after a capital sentencing jury deadlocks and fails to reach a unanimous verdict is not an "acquittal on the merits" barring retrial. Because death penalty sentencing proceedings bear the hallmarks of a trial, we held in *Arizona* v. *Rumsey*, 467 U. S. 203, 211 (1984), that "an acquittal on the merits by the sole decisionmaker in the proceeding is final and bars retrial on the same charge." A defendant is "acquitted" of the death penalty for purposes of double jeopardy when the sentencer "decide[s] that the prosecution has not proved its case that the death penalty is appropriate." *Poland* v. *Arizona*, 476 U. S. 147, 155 (1986) (emphasis deleted and internal quotation marks omitted). In the absence of a death penalty acquittal, the "clean slate" rule recognized in *North Carolina* v. *Pearce*, 395 U. S. 711, 719–721 (1969), applies and no double jeopardy bar arises.

When, as in this case, the jury deadlocks in the penalty phase of a capital trial, it does not "decide" that the prosecution has failed to prove its case for the death penalty. Rather, the jury makes no decision at all. Petitioner's jury did not "*agre[e]* . . . that the prosecution ha[d] not proved its case." *Bullington*, *supra*, at 443 (emphasis added). It did not make any findings about the existence of the aggravating or mitigating circumstances. See *Rumsey*, *supra*, at 211 (where the trial judge "entered findings denying the existence of each of the seven statutory aggravating circumstances," the resulting "judgment, based on findings sufficient to establish legal entitlement to the life sentence, amounts to an acquittal on the merits and, as such, bars any

retrial of the appropriateness of the death penalty"). In short, the jury did not "acquit" petitioner of the death penalty under *Bullington* and *Rumsey*.

That Pennsylvania law mandates a life sentence when a capital sentencing jury deadlocks does not, for the reasons given by the Court, *ante*, at 110, transform that life sentence into a death penalty acquittal. Because petitioner was neither acquitted nor convicted of the death penalty in his first trial, the Double Jeopardy Clause was not offended by a retrial to determine whether death was the appropriate punishment for his offenses. There is no need to say more.

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

This case concerns the events that "terminat[e] jeopardy" for purposes of the Double Jeopardy Clause. *Richardson* v. *United States*, 468 U. S. 317, 325 (1984). The specific controversy before the Court involves the entry of final judgment, as mandated by state law, after a jury deadlock. The question presented is whether a final judgment so entered qualifies as a jeopardy-terminating event. The Court concludes it does not. I would hold that it does.

When a Pennsylvania capital jury deadlocks at the sentencing stage of a proceeding, state law requires the trial court to enter a judgment imposing a life sentence. See Pa. Stat. Ann., Tit. 42, § 9711(c)(1)(v) (Purdon Supp. 2002). Ordinarily, a judgment thus imposed is final. The government may neither appeal the sentence nor retry the sentencing question before a second jury. See Brief for Petitioner 7; Tr. of Oral Arg. 26. The sentencing question can be retried—if retrial is not barred by the Double Jeopardy Clause—only if the defendant successfully appeals the underlying conviction and is convicted again on retrial.[1]

[1] When a typical criminal jury is unable to agree on a verdict, in contrast, the judge declares a mistrial and the prosecutor has the immediate right to reprosecute the counts on which the jury hung. See, *e. g.*, *Rich-*

The Court today holds that the state-mandated entry of a life sentence after a jury deadlock, measured against the Double Jeopardy Clause, does not block retrial of the life or death question. The Court so rules because the life sentence, although final under state law, see *id.*, at 25–26, is not the equivalent of "an acquittal on the merits," *ante*, at 107–108 (quoting *Arizona* v. *Rumsey*, 467 U. S. 203, 211 (1984)). Our double jeopardy case law does indeed "attac[h] particular significance to an acquittal," *United States* v. *Scott*, 437 U. S. 82, 91 (1978); that jurisprudence accords "absolute finality to a jury's *verdict* of acquittal[,] no matter how erroneous its decision," *Burks* v. *United States*, 437 U. S. 1, 16 (1978). And, as the Court stresses, the hung jury in Sattazahn's sentencing proceeding did not "acqui[t]" him "on the merits." *Ante*, at 107 (internal quotation marks omitted). But these two undebatable points are not inevitably dispositive of this case, for our decisions recognize that jeopardy can terminate in circumstances other than an acquittal. Cf. *Richardson*, 468 U. S., at 325 ("[T]he Double Jeopardy Clause by its terms applies only if there has been some event, *such as* an acquittal, which terminates the original jeopardy." (Emphasis added.)).

In no prior case have we decided whether jeopardy is terminated by the entry of a state-mandated sentence when the jury has deadlocked on the sentencing question. As I see it, the question is genuinely debatable, with tenable argument supporting each side. Comprehending our double jeopardy decisions in light of the underlying purposes of the Double Jeopardy Clause, I conclude that jeopardy does terminate in such circumstances. I would hold, as herein explained, that once the trial court entered a final judgment of life for Sattazahn, the Double Jeopardy Clause barred Pennsylvania from seeking the death penalty a second time.

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ardson v. *United States*, 468 U. S. 317, 318, 325 (1984); *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 570 (1977).

I

The standard way for a defendant to secure a final judgment in her favor is to gain an acquittal.[2] This case involves the atypical situation in which a defendant prevails by final judgment *without* an acquittal. Unusual as the situation is, our double jeopardy jurisprudence recognizes its existence. In *Scott*, the Court stated that the "primary purpose" of the Double Jeopardy Clause is to "protect the integrity" of final determinations of guilt or innocence. 437 U. S., at 92. We acknowledged, however, that "this Court has also developed a body of law guarding the separate but related interest of a defendant in avoiding multiple prosecutions even where no final determination of guilt or innocence has been made." *Ibid.* "Such interests," we observed, "may be involved in two different situations: the first, in which the trial judge declares a mistrial; the second, in which the trial judge terminates the proceedings favorably to the defendant on a basis not related to factual guilt or innocence." *Ibid.*

The first category—mistrials—is instructive, although the case at hand does not fit within that category. In deciding whether reprosecution is permissible after a mistrial, "this Court has balanced the valued right of a defendant to have his trial completed by the particular tribunal summoned to sit in judgment on him against the public interest in insuring

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[2] The Court has many times said that the Double Jeopardy Clause protects the integrity of "final judgments." See, *e. g.*, *Crist* v. *Bretz*, 437 U. S. 28, 33 (1978) ("A primary purpose" served by the Double Jeopardy Clause is "akin to that served by the doctrines of *res judicata* and collateral estoppel—to preserve the finality of judgments."); *United States* v. *Scott*, 437 U. S. 82, 92 (1978) ("the primary purpose of the Double Jeopardy Clause was to protect the integrity of a final judgment"). In such declarations, the Court appears to have used "final judgment" interchangeably with "acquittal." See *Crist*, 437 U. S., at 33 (referring to the English common-law rule that "a defendant has been put in jeopardy only when there has been a conviction or an acquittal—after a complete trial"); *Scott*, 437 U. S., at 92 (equating the term "final judgment" with a "final determination of guilt or innocence").

that justice is meted out to offenders." *Ibid.* (internal quotation marks and citation omitted). Weighing these interests, we have decided that mistrials declared on the motion of the prosecution or *sua sponte* by the court terminate jeopardy unless stopping the proceedings is required by "manifest necessity." *Id.*, at 93–94; see, *e. g.*, *Downum* v. *United States*, 372 U. S. 734, 737–738 (1963). A hung jury, the Court has long recognized, meets the "manifest necessity" criterion, *i. e.*, it justifies a trial court's declaration of a mistrial and the defendant's subsequent reprosecution. *Arizona* v. *Washington*, 434 U. S. 497, 509 (1978). Retrial is also permissible where "a *defendant* successfully seeks to avoid his trial prior to its conclusion by a motion for mistrial," *Scott*, 437 U. S., at 93, unless the motion is intentionally provoked by the government's actions, *id.*, at 94. Ordinarily, "[s]uch a motion by the defendant is deemed to be a deliberate election on his part to forgo his valued right to have his guilt or innocence determined before the first trier of fact." *Id.*, at 93.

The second category described in *Scott*—"termination of [a] trial in [a defendant's] favor before any determination of factual guilt or innocence," *id.*, at 94—is distinguished from the first based on the quality of finality a termination order imports. "When a trial court declares a mistrial, it all but invariably contemplates that the prosecutor will be permitted to proceed anew notwithstanding the defendant's plea of double jeopardy." *Id.*, at 92. When a motion to terminate is granted, in contrast, the trial court "obviously contemplates that the proceedings will terminate then and there in favor of the defendant." *Id.*, at 94. In *Scott*, for example, the trial court granted the defendant's motion to dismiss one count of the indictment, prior to its submission to the jury, on the ground of preindictment delay. If the prosecution had wanted to "reinstate the proceedings in the face of such a ruling," it could not simply have refiled the indictment; in-

stead, it would have had to "seek reversal of the decision of the trial court" by pursuing an appeal. *Ibid.*[3]

Sattazahn's case falls within *Scott*'s second category. After the jury deadlocked at the sentencing stage, no mistrial was declared, for Pennsylvania law provided that the trial proceedings would terminate "then and there" in Sattazahn's favor. The government could not simply retry the sentencing issue at will. The hung jury in Sattazahn's case did not "mak[e] . . . completion" of the first proceeding "impossible," *Wade* v. *Hunter*, 336 U. S. 684, 689 (1949); instead, Pennsylvania law *required* the judge to bring that proceeding to a conclusion by entering a final judgment imposing a life sentence, see Pa. Stat. Ann., Tit. 42, § 9711(c)(1)(v) (Purdon Supp. 2002).

Double jeopardy law with respect to *Scott*'s second category is relatively undeveloped. As observed at the outset, see *supra*, at 119, we have never before decided whether jeopardy terminates upon the entry of a state-mandated final judgment favorable to a defendant *after* a jury deadlocks. We have, however, addressed the termination of a trial *prior* to submission of the case to the jury. *Scott* was such a case and, as the Court underscores, *ante*, at 114, that decision denied double jeopardy protection. In allowing a second prosecution in *Scott*, however, the Court stressed that the defendant "deliberately ch[ose] to seek termination of the proceedings against him on a basis unrelated to factual guilt or innocence," *i. e.*, the prosecution's preindictment delay, 437 U. S., at 98–99: Scott "successfully undertook to persuade the trial court not to submit the issue of guilt or innocence to the jury . . . empaneled to try him," *id.*, at 99. Although

[3] When this Court has considered dismissals of indictments that contemplate the possibility of immediate reprosecution without an appeal, it has analyzed them as mistrials. See *Lee* v. *United States*, 432 U. S. 23, 30 (1977) (dismissal based on insufficient indictment treated as mistrial for double jeopardy purposes because Government could simply file new indictment without appealing dismissal).

holding that the Double Jeopardy Clause "does not relieve a defendant from the consequences of his voluntary choice," *ibid.*, the Court reiterated the underlying purpose of the Clause: to prevent the State from making "repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity," *id.*, at 95 (quoting *Green* v. *United States*, 355 U. S. 184, 187 (1957)).

The ruling in *Scott* placing the defendant in that case outside the zone of double jeopardy protection, in sum, was tied to the absence of a completed first trial episode and to the defendant's choice to abort the initial trial proceedings. "[T]he Government," we explained, "was quite willing to continue with its production of evidence . . . , but the defendant elected to seek termination of the trial on grounds unrelated to guilt or innocence." 437 U. S., at 96. "This is scarcely a picture of an all-powerful state relentlessly pursuing a defendant who had either been found not guilty or who had at least insisted on having the issue of guilt submitted to the first trier of fact." *Ibid.*

II

Scott, it is true, did not home in on a case like Sattazahn's. The Court's reasoning, nevertheless, lends credence to the view that a trial-terminating judgment for life, not prompted by a procedural move on the defendant's part, creates a legal entitlement protected by the Double Jeopardy Clause. Cf. *Rumsey*, 467 U. S., at 211 (judgment based on factual findings sufficient to establish "legal entitlement" to a life sentence bars retrial). *Scott* recognized that defendants have a double jeopardy interest in avoiding multiple prosecutions even when there has been no determination of guilt or innocence, and that this interest is implicated by preverdict judgments terminating trials. 437 U. S., at 92. The interest in avoiding a renewed prosecution following a final judg-

ment is surely engaged here. Sattazahn's life sentence had significantly greater finality than the dismissal for preindictment delay in *Scott*, for under Pennsylvania law, as noted earlier, see *supra*, at 118, the government could not have sought to retry the sentencing question even through an appeal.

Moreover—and discrete from the Court's analysis in *Scott*—the perils against which the Double Jeopardy Clause seeks to protect are plainly implicated by the prospect of a second capital sentencing proceeding. A determination that defendants in Sattazahn's position are subject to the "ordeal" of a second full-blown life or death trial "compel[s] [them] to live in a continuing state of anxiety and insecurity." *Green*, 355 U. S., at 187.[4]

Despite the attendant generation of anxiety and insecurity, we have allowed retrial after hung jury mistrials in order to give the State "one complete opportunity to convict those who have violated its laws." *Washington*, 434 U. S., at 509; see *Wade*, 336 U. S., at 689 ("a defendant's valued right to have his trial completed by a particular tribunal must in some instances be subordinated to the public's interest in fair trials designed to end in just judgments"). But here, the Commonwealth has already had such an opportunity: The prosecution presented its evidence to the jury, and after the jury deadlocked, final judgment was entered at the direction of the state legislature itself. This was not an instance in which "the Government was quite willing to continue with its production of evidence," but was thwarted by a defense-proffered motion. *Scott*, 437 U. S., at 96.

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[4] The Court identifies policy reasons why a legislature might prefer to provide for the entry of a judgment that could be reopened should the defendant mount a successful appeal. See *ante*, at 110, 115. It does not automatically follow, however, that such a provisional judgment would be compatible with the Double Jeopardy Clause. Cf. *infra*, at 127 (urging that the prospect of a second death penalty proceeding heightens double jeopardy concerns).

We also sanctioned retrial in *Scott,* even though that case involved a final adjudication. But there, the defendant voluntarily avoided subjecting himself to a determination of guilt or innocence in the first proceeding; he did so by successfully moving, prior to submission of the case to the jury, for dismissal of the count in question because of preindictment delay. *Ibid.;* see *Green*, 355 U. S., at 188 (suggesting that double jeopardy protection does not apply if defendant consents to dismissal of his first jury). That was not the situation here: Unlike Scott, Sattazahn did not successfully avoid having the question of his guilt or innocence submitted to the first jury. The "issue of guilt" in his case indeed was "submitted to the first trier of fact." *Scott*, 437 U. S., at 96. Sattazahn was thus "forced to run the gantlet once" on death. *Green*, 355 U. S., at 190. Nor did Sattazahn himself bring about termination of his first trial.[5] Once the jury deadlocked, state law directly mandated that the trial end. In

[5] The governing statute provides that "the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment." Pa. Stat. Ann., Tit. 42, § 9711(c)(1)(v) (Purdon Supp. 2002). In Sattazahn's case, after the jury had deliberated for about 3½ hours, the judge announced that he had "received a communication from the foreperson indicating this jury is hopelessly deadlocked." App. 22. He then stated: "I will bring the jury down and inquire of the foreperson and the jury whether or not any further deliberations would be productive." *Ibid.* Only at that point did Sattazahn move "that the jury be discharged" and that a life sentence be entered under § 9711(c)(1)(v). *Ibid.* The judge did not grant Sattazahn's motion. Instead, he conducted an inquiry to determine whether the jury was "hopelessly deadlocked"; he then found that it was, discharged the jury, and announced that "by virtue of the law" he would enter a life sentence. *Id.*, at 23–24. The judge, at that stage, never referred back to Sattazahn's motion. As I read this record, the judge's decision to conduct an inquiry, discharge the jury, and enter a life sentence was prompted not by a defensive motion, but simply by the jury's announcement that it was deadlocked, just as the statute instructs.

short, the reasons we thought double jeopardy protection did not attach in *Scott* are absent here.[6]

I recognize that this is a novel and close question: Sattazahn was not "acquitted" of the death penalty, but his case was fully tried and the court, on its own motion, entered a final judgment—a life sentence—terminating the trial proceedings. I would decide the double jeopardy issue in Sattazahn's favor, for the reasons herein stated, and giving weight to two ultimate considerations. First, the Court's holding confronts defendants with a perilous choice, one we have previously declined to impose in other circumstances. See *Green*, 355 U. S., at 193–194. Under the Court's decision, if a defendant sentenced to life after a jury deadlock chooses to appeal her underlying conviction, she faces the possibility of death if she is successful on appeal but convicted on retrial. If, on the other hand, the defendant loses her appeal, or chooses to forgo an appeal, the final judgment for life stands. In other words, a defendant in Sattazahn's position must relinquish either her right to file a potentially meritorious appeal, or her state-granted entitlement to avoid the death penalty.

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[6] We have also held that the Double Jeopardy Clause does not bar imposition of a greater sentence on retrial if a defendant successfully appeals a conviction. See, *e. g.*, *North Carolina* v. *Pearce*, 395 U. S. 711 (1969); *United States* v. *DiFrancesco*, 449 U. S. 117 (1980). "[T]he basic design of the double jeopardy provision . . . as a bar against repeated attempts to convict, with consequent subjection of the defendant to embarrassment, expense, anxiety, and insecurity," has "no significant application to the prosecution's . . . right to review a sentence." *Id.*, at 136. This Court has determined, however, that for purposes of the Double Jeopardy Clause, capital sentencing proceedings involving proof of one or more aggravating factors are to be treated as trials of separate *offenses*, not mere sentencing proceedings. See *ante*, at 106–109; *ante*, at 110–112 (opinion of SCALIA, J.); *Ring* v. *Arizona*, 536 U. S. 584 (2002); *Bullington* v. *Missouri*, 451 U. S. 430 (1981). Our decisions permitting resentencing after appeal of noncapital convictions thus do not address the question presented in this case.

We have previously declined to interpret the Double Jeopardy Clause in a manner that puts defendants in this bind. In *Green*, we rejected the argument that appealing a second-degree murder conviction prolonged jeopardy on a related first-degree murder charge. We noted that a ruling on this question in favor of the prosecutor would require defendants to "barter [their] constitutional protection against a second prosecution for an offense punishable by death as the price of a successful appeal from an erroneous conviction of another offense." *Id.*, at 193. "The law," we concluded, "should not . . . place [defendants] in such an incredible dilemma." *Ibid.* Although Sattazahn was required to barter a state-law entitlement to life against his right to appeal, rather than a constitutional protection, I nevertheless believe the considerations advanced in *Green* should inform our decision here.

Second, the punishment Sattazahn again faced on retrial was death, a penalty "unique in both its severity and its finality." *Monge* v. *California*, 524 U. S. 721, 732 (1998) (internal quotation marks omitted). These qualities heighten Sattazahn's double jeopardy interest in avoiding a second prosecution. The "hazards of [a second] trial and possible conviction," *Green*, 355 U. S., at 187, the "continuing state of anxiety and insecurity" to which retrial subjects a defendant, *ibid.*, and the "financial" as well as the "emotional burden" of a second trial, *Washington*, 434 U. S., at 503–504, are all exacerbated when the subsequent proceeding may terminate in death. Death, moreover, makes the "dilemma" a defendant faces when she decides whether to appeal all the more "incredible." *Green*, 355 U. S., at 193. As our elaboration in *Gregg* v. *Georgia*, 428 U. S. 153, 188 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.), and later cases demonstrates, death is indeed a penalty "different" from all others.

For the reasons stated, I would hold that jeopardy terminated as to Sattazahn's sentence after the judge entered a final judgment for life. I would therefore reverse the judgment of the Supreme Court of Pennsylvania.

Syllabus

PIERCE COUNTY, WASHINGTON *v.* GUILLEN, LEGAL GUARDIAN OF GUILLEN ET AL., MINORS, ET AL.

CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 01–1229. Argued November 4, 2002—Decided January 14, 2003

As part of its effort to improve the safety of the Nation's highways, Congress adopted the Hazard Elimination Program (Program), 23 U. S. C. § 152, which provides state and local governments with funding to improve the most dangerous sections of their roads. To be eligible for such funding, a government must undertake a thorough evaluation of its public roads. Because of States' concerns that the absence of confidentiality with respect to § 152's compliance measures would increase the liability risk for accidents that took place at hazardous locations before improvements could be made and Department of Transportation's concerns that the States' reluctance to be forthcoming in their data collection efforts undermined the Program's effectiveness, Congress, in 1987, adopted § 409, which provided that materials "compiled" for § 152 purposes "shall not be admitted into evidence in Federal or State court." Responding to subsequent court decisions holding that § 409 did not apply to pretrial discovery and protected only materials that an agency actually generated for § 152 purposes, not documents that the agency collected to prepare its § 152 application, Congress expressly made the statute applicable to pretrial discovery in 1991 and added the phrase "or collected" after the word "compiled" in 1995. Several months before respondent Ignacio Guillen's wife died in an automobile accident at an intersection in petitioner county, petitioner's § 152 funding request for the intersection was denied. Its second request was approved three weeks after the accident. Petitioner declined to provide respondents' counsel with information about accidents at the intersection, asserting that any relevant information was protected by § 409. Respondents then filed an action in Washington state court, alleging that petitioner's refusal to disclose violated the State's Public Disclosure Act (PDA). The trial court granted respondents summary judgment, ordering petitioner to disclose five documents and pay respondents' attorney's fees. While petitioner's appeal was pending, respondents filed another state-court action, alleging that petitioner had been negligent in failing to install proper traffic controls at the intersection. Petitioner refused to comply with their discovery request for information regarding accidents at the intersection, and respondents

successfully sought an order to compel. The State Court of Appeals granted petitioner's motion for discretionary appellate review of the interlocutory order, consolidated this and the PDA appeals, and in large part affirmed, concluding that four of the documents requested in the PDA action were not protected. On further appeal, the Washington Supreme Court determined that disclosure under the relevant state laws would be appropriate only if the requested materials were not protected by § 409; that protection under § 409, as amended in 1995, turned on whether the documents were collected for § 152 purposes, without regard to the identity of the documents' custodian; and that the 1995 amendment's adoption exceeded Congress' powers under the Spending, Commerce, and Necessary and Proper Clauses. It therefore vacated the lower court's judgment and remanded the case.

Held:

1. This Court lacks jurisdiction to hear the tort portion of the case but has jurisdiction to hear the PDA portion. Certain state-court judgments can be treated as final for jurisdictional purposes even though further proceedings are to take place in the state courts. *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 477–483 (outlining four exceptions to the finality rule). In the tort action, the Washington Supreme Court resolved only a discovery dispute; it did not determine the litigation's final outcome. And the *Cox* exceptions do not apply to that action. Accordingly, this Court dismisses the writ of certiorari with respect to that action for want of jurisdiction. However, the PDA action falls squarely under the first *Cox* exception. The State Supreme Court's ruling that the 1995 amendment to § 409 was invalid, which left four documents subject to disclosure under the PDA and only the amount of attorney's fees remaining to be decided on remand, is "conclusive" as to the federal issue and "the outcome of further proceedings preordained," *id.*, at 479. Pp. 140–143.

2. Both the original § 409 and the 1995 amendment fall within Congress' Commerce Clause power. Pp. 143–148.

(a) Before addressing the constitutional question, this Court must determine § 409's scope. Evidentiary privileges, such as § 409, must be construed narrowly because they impede the search for the truth. See *Baldrige* v. *Shapiro*, 455 U. S. 345, 360. This Court agrees with the United States that § 409 protects only information compiled or collected for § 152 purposes, but does not protect information that was compiled or collected for purposes unrelated to § 152, as held by agencies that compiled or collected that information, even if the information was at some point "collected" by another agency for § 152 purposes. Although respondents offer the narrowest interpretation of § 409—that § 409 protects only materials actually created by the agency responsible for seeking § 152 funding—their reading leaves the 1995 amendment (changing

"compiled" to "compiled or collected") with no real and substantial effect. By contrast, petitioner's reading—that a document initially prepared by an agency for purposes unrelated to § 152, and held by that agency, becomes protected under § 409 when a copy of that document is collected by another agency for § 152 purposes—gives the statute too broad of a reach, thus conflicting with the rule that privileges should be construed narrowly. The Government's interpretation suffers from neither of these faults. It gives effect to the 1995 amendment by making clear that § 409 protects not just the information an agency compiles for § 152 purposes but also any information that an agency collects from other sources for those purposes. It also takes a narrower view of the privilege by making it inapplicable to information compiled or collected for purposes unrelated to § 152 and held by agencies that are not pursuing § 152 objectives. The Court's view of § 409 is reinforced by the 1995 amendment's history. "[A]s collected" was added to address confusion about § 409's proper scope and to overcome judicial reluctance to protect raw data collected for § 152 purposes. Congress wished to make clear that § 152 was not intended to be an effort-free tool in litigation against state and local governments, but § 409's text evinces no intent to make plaintiffs worse off than they would have been had § 152 funding never existed. Pp. 143–146.

(b) Section 409 is a proper exercise of Congress' Commerce Clause authority to "regulate the use of the channels of interstate commerce" and "to regulate and protect the instrumentalities of interstate commerce," *United States* v. *Lopez*, 514 U. S. 549, 558. Congress adopted § 152 to assist state and local governments in reducing hazardous conditions in the Nations' channels of commerce, but that effort was impeded by the States' reluctance to comply fully with § 152's requirements lest those governments become easier targets for negligence actions by providing a centralized location from which would-be plaintiffs could obtain much of the evidence necessary to sue. Because Congress could reasonably believe that adopting a measure eliminating an unforeseen side effect of § 152's information-gathering requirement would result in more diligent collection efforts, more candid discussions of hazardous locations, better informed decisionmaking, and greater safety on the Nation's roads, both the original § 409 and the 1995 amendment can be viewed as legislation aimed at improving safety in the channels of commerce and increasing protections for the instrumentalities of interstate commerce. Pp. 146–148.

Certiorari dismissed in part; 144 Wash. 2d 696, 31 P. 3d 628, reversed and remanded.

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

Daniel R. Hamilton argued the cause for petitioner. With him on the briefs was *Susan P. Jensen.*

Deputy Solicitor General Clement argued the cause for the United States as intervenor. On the briefs were *Solicitor General Olson, Assistant Attorney General McCallum, Deputy Solicitor General Kneedler, Malcolm L. Stewart, Paul R. Q. Wolfson, Mark B. Stern, Alisa B. Klein, Kirk K. Van Tine, Paul M. Geier, Dale C. Andrews, Laura C. Fentonmiller,* and *Edward V. A. Kussy.*

Salvador A. Mungia argued the cause for respondents. With him on the brief were *Darrell L. Cochran* and *J. Bradley Buckhalter.**

JUSTICE THOMAS delivered the opinion of the Court.

We address in this case whether 23 U. S. C. § 409, which protects information "compiled or collected" in connection

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*Briefs of *amici curiae* urging reversal were filed for the State of Louisiana by *Richard P. Ieyoub,* Attorney General, *John C. Young* and *James R. Dawson,* Assistant Attorneys General, and *Lawrence A. Durant;* for the State of Washington et al. by *Christine O. Gregoire,* Attorney General of Washington, and *William Berggren Collins* and *Michael E. Tardif,* Senior Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: *Bruce M. Botelho* of Alaska, *Robert A. Butterworth* of Florida, *Earl I. Anzai* of Hawaii, *James E. Ryan* of Illinois, *Steve Carter* of Indiana, *J. Joseph Curran, Jr.,* of Maryland, *Frankie Sue Del Papa* of Nevada, *Robert Tenorio Torres* of the Northern Mariana Islands, *Betty D. Montgomery* of Ohio, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Mark L. Shurtleff* of Utah, and *William H. Sorrell* of Vermont; for the Association of American Railroads by *Carter G. Phillips, Stephen B. Kinnaird,* and *Daniel Saphire;* and for the Product Liability Advisory Council, Inc., by *Kenneth S. Geller* and *John J. Sullivan.*

A brief of *amicus curiae* urging affirmance was filed for the Association of Trial Lawyers of America by *Jeffrey Robert White.*

Briefs of *amici curiae* were filed for the Washington State Trial Lawyers Association Foundation by *Debra L. Stephens* and *Bryan P. Harnetiaux;* for Lynn A. Baker et al. by *Ms. Baker, pro se;* and for Robert Whitmer et al. by *Charles K. Wiggins, Kenneth W. Masters,* and *Keith L. Kessler.*

with certain federal highway safety programs from being discovered or admitted in certain federal or state trials, is a valid exercise of Congress' authority under the Constitution.

I

A

Beginning with the Highway Safety Act of 1966, Congress has endeavored to improve the safety of our Nation's highways by encouraging closer federal and state cooperation with respect to road improvement projects. To that end, Congress has adopted several programs to assist the States in identifying highways in need of improvements and in funding those improvements. See, *e. g.*, 23 U. S. C. §§ 130 (Railway-Highway Crossings), 144 (Highway Bridge Replacement and Rehabilitation Program), and 152 (Hazard Elimination Program). Of relevance to this case is the Hazard Elimination Program (Program) which provides state and local governments with funding to improve the most dangerous sections of their roads. To be eligible for funds under the Program, a state or local government must undertake a thorough evaluation of its public roads. Specifically, § 152(a)(1) requires them to

> "conduct and systematically maintain an engineering survey of all public roads to identify hazardous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads, which may constitute a danger to motorists, bicyclists, and pedestrians, assign priorities for the correction of such locations, sections, and elements, and establish and implement a schedule of projects for their improvement."

Not long after the adoption of the Program, the Secretary of Transportation reported to Congress that the States objected to the absence of any confidentiality with respect to their compliance measures under § 152. H. R. Doc. No. 94–366, p. 36 (1976). According to the Secretary's re-

port, the States feared that diligent efforts to identify roads eligible for aid under the Program would increase the risk of liability for accidents that took place at hazardous locations before improvements could be made. *Ibid.* In 1983, concerned that the States' reluctance to be forthcoming and thorough in their data collection efforts undermined the Program's effectiveness, the United States Department of Transportation (DOT) recommended the adoption of legislation prohibiting the disclosure of information compiled in connection with the Program. See Brief for United States as *Amicus Curiae* in *Alabama Highway Dept.* v. *Boone*, O. T. 1991, No. 90–1412, p. 10, cert. denied, 502 U. S. 937 (1991).

To address the concerns expressed by the States and the DOT, in 1987, Congress adopted 23 U. S. C. § 409, which provided:

> "Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying[,] evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be admitted into evidence in Federal or State court or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data." Surface Transportation and Uniform Relocation Assistance Act of 1987, § 132, 101 Stat. 170.

The proper scope of § 409 became the subject of some dispute among the lower courts. Some state courts, for example, concluded that § 409 addressed only the admissibility of relevant documents at trial and did not apply to pretrial dis-

covery. According to these courts, although information compiled for § 152 purposes would be inadmissible at trial, it nevertheless remained subject to discovery. See, *e. g.*, *Ex parte Alabama Highway Dept.*, 572 So. 2d 389 (Ala. 1990), cert. denied *sub nom. Alabama Highway Dept.* v. *Boone*, 502 U. S. 937 (1991); *Light* v. *New York*, 149 Misc. 2d 75, 80, 560 N. Y. S. 2d 962, 965 (Ct. Cl. 1990); *Indiana Dept. of Transp.* v. *Overton*, 555 N. E. 2d 510, 512 (Ind. App. 1990). Other state courts reasoned that § 409 protected only materials actually generated by a governmental agency for § 152 purposes, and documents collected by that agency to prepare its § 152 funding application remained both admissible and discoverable. See, *e. g.*, *Wiedeman* v. *Dixie Elec. Membership Corp.*, 627 So. 2d 170, 173 (La. 1993), cert. denied, 511 U. S. 1127 (1994). See also, *e. g.*, *Southern Pacific Transp. Co.* v. *Yarnell*, 181 Ariz. 316, 319–320, 890 P. 2d 611, 614–615, cert. denied, 516 U. S. 937 (1995) (applying the same rule in the context of the Railway-Highway Crossings program); *Tardy* v. *Norfolk Southern Corp.*, 103 Ohio App. 3d 372, 378–379, 659 N. E. 2d 817, 820–821 (same), appeal not allowed, 74 Ohio St. 3d 1408, 655 N. E. 2d 187 (1995) (Table).

Responding to these developments, Congress amended § 409 in two ways. In 1991, Congress expressly made the statute applicable to pretrial discovery, see Intermodal Surface Transportation Efficiency Act of 1991, § 1035(a), 105 Stat. 1978, and in 1995, Congress added the phrase "or collected" after the word "compiled," National Highway System Designation Act of 1995, § 323, 109 Stat. 591. As amended, § 409 now reads:

> "Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety con-

> struction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data."

B

Ignacio Guillen's wife, Clementina Guillen-Alejandre, died on July 5, 1996, in an automobile accident at the intersection of 168th Street East and B Street East (168/B intersection), in Pierce County, Washington. Several months before the accident, petitioner had requested § 152 funding for this intersection, but the request had been denied. Petitioner renewed its application for funding on April 3, 1996, and the second request was approved on July 26, 1996, only three weeks after the accident occurred.

Beginning on August 16, 1996, counsel for respondents sought to obtain from petitioner information about accidents that had occurred at the 168/B intersection.[1] Petitioner declined to provide any responsive information, asserting that any relevant documents were protected by § 409. After informal efforts failed to resolve this discovery dispute, respondents turned to the Washington courts.

Respondents first filed an action alleging that petitioner's refusal to disclose the relevant documents violated the

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[1] In a letter dated October 28, 1996, respondents' counsel clarified his request as follows: "'I want to make the record clear that we are not seeking any reports that were specifically written for developing any safety construction improvement project at the intersection at issue.'" Quoted in 144 Wash. 2d 696, 703, 31 P. 3d 628, 633 (2001). The letter further explained, however, that respondents were seeking "'a copy of all documents that record the accident history of the intersection that may have been used in the preparation of any such reports.'" Quoted in *id.*, at 703–704, 31 P. 3d, at 633.

State's Public Disclosure Act (PDA).[2] The trial court granted summary judgment in favor of respondents and ordered petitioner to disclose five documents[3] and pay respondents' attorney's fees. Petitioner appealed.

While the appeal in the PDA action was pending, respondents filed a separate action, asserting that petitioner had been negligent in failing to install proper traffic controls at the 168/B intersection. In connection with the tort action, respondents served petitioner with interrogatories seeking information regarding accidents that had occurred at the 168/B intersection. Petitioner refused to comply with the discovery request, once again relying on § 409. Respondents successfully sought an order to compel, and petitioner moved for discretionary appellate review of the trial judge's interlocutory order. The Washington Court of Appeals

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[2] The relevant portion of the PDA provides:

"Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records." Wash. Rev. Code § 42.17.340(1) (2000).

[3] The trial court's judgment encompassed the following materials: (1) a list of accidents at the 168/B intersection from 1990 through 1996, prepared by the Washington State Patrol, showing the location, date, time, and nature of the accident, which petitioner subsequently obtained for the purpose of conducting a study of the safety of the intersection; (2) a collision diagram dated January 5, 1989, prepared by a county employee responsible for investigating accidents at the intersection; (3) another collision diagram dated July 18, 1988, prepared by the same county employee; (4) reports of accidents at the intersection prepared by law enforcement agencies investigating the accidents; and (5) a draft memorandum from petitioner's public works director to a county council member, consisting of information used for petitioner's application for § 152 funds for the 168/B intersection. See 144 Wash. 2d, at 704–705, and n. 1; 31 P. 3d, at 634, and n. 1.

granted the motion and consolidated the appeal in the tort case with the appeal in the PDA action.

On review, the Washington Court of Appeals in large part affirmed the decisions below. In interpreting § 409, the court distinguished between an agency that collects or compiles information for purposes *unrelated* to § 152 and one that collects and compiles information pursuant to § 152. In the court's view, documents held by the first agency would not be protected by § 409, even if they subsequently were used for § 152 purposes, whereas documents held by the second agency would be protected, so long as their collection or compilation was the result of § 152 efforts. Applying these principles, the court concluded that only one of the documents at issue in the PDA case—the draft memorandum by the county's public works director, see n. 3, *supra*—was protected by § 409 because it had been prepared for § 152 purposes. The rest were not protected because respondents "carefully requested reports in the hands of the sheriff or other law enforcement agencies, *not* reports or data 'collected or compiled' by the Public Works Department." 96 Wash. App. 862, 873, 982 P. 2d 123, 129 (1999). The appellate court also expressed doubt about the constitutionality of § 409 as applied in state courts, but decided not to resolve the question because it was not raised. *Id.*, at 875, n. 26, 982 P. 2d, at 130, n. 26. Petitioner appealed once again.

The Washington Supreme Court's decision followed a three-step analysis. The court first determined that disclosure of the information respondents sought under both the PDA and state discovery rules would be appropriate only if the materials requested by respondents were not protected by § 409.

Second, examining the scope of § 409, the Washington Supreme Court rejected, as "unsound in principle and unworkable in practice," 144 Wash. 2d 696, 727, 31 P. 3d 628, 646 (2001), the appellate court's view that § 409 drew a distinction between documents "as held by" the Public Works De-

partment and documents "as held by" the county sheriff. Rather, it reasoned that § 409, as amended in 1995, purported to protect from disclosure any documents prepared for state and local purposes, so long as those documents were also collected for § 152 purposes. In the court's view, the statute did not turn on the identity of the custodian of the document at issue.

Having so construed § 409, the court proceeded to consider whether the adoption of the 1995 amendment to § 409 was a proper exercise of Congress' powers under the Spending, Commerce, and Necessary and Proper Clauses of Article I of the United States Constitution. With respect to the Spending Clause, the court found that "barring the admissibility and discovery in state court of accident reports and other traffic and accident materials and 'raw data' that were originally prepared for routine state and local purposes, simply because they are 'collected' for, *among other reasons*, federal purposes pursuant to a federal statute" did not reasonably serve any "valid federal interest in the operation of the federal safety enhancement program." *Id.*, at 737, 31 P. 3d, at 651. With respect to the Commerce Clause, the court concluded that § 409 was not an "integral part" of the regulation of the federal-aid highway system and, thus, could not be upheld under *Hodel* v. *Indiana*, 452 U. S. 314 (1981). 144 Wash. 2d, at 742, 31 P. 3d, at 654. Finally, with respect to the Necessary and Proper Clause, the court ruled that, although Congress could require state courts to enforce a federal privilege protecting materials "that would not have been created but-for federal mandates such as . . . [§]152," it was "neither 'necessary' nor 'proper' for Congress in 1995 to extend that privilege to traffic and accident materials and raw data created and collected for state and local purposes, simply because they are *also* collected and used for federal purposes." *Id.*, at 743, 31 P. 3d, at 654–655.

In light of its conclusion that the 1995 amendment to § 409 exceeded Congress' power under the Constitution, and,

therefore, was not binding on the States, the court held that § 409 protected only information originally created for § 152 purposes. But, rather than determining whether the documents or data at issue in this case would be protected under its reading of § 409, the court vacated the lower court's judgment and remanded the case for the lower courts to consider the record in the first instance.[4]

Three justices concurred only in the result. They disagreed with the majority's broad reading of the statute and would have held that § 409 precludes a potential plaintiff only from obtaining information from an agency that collected that information for § 152 purposes.

We granted certiorari to resolve the question of the constitutionality of this federal statute, 535 U. S. 1033 (2002), and now reverse.

II

Before addressing the merits of petitioner's claims, we must first consider whether we have jurisdiction to hear the case. Under 28 U. S. C. § 1257(a), this Court has certiorari jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where the validity of a . . . statute of the United States is drawn in question . . . on the ground of its being repugnant to the Constitution . . . of the United States." As a general matter, to be reviewed by this Court, a state-court judgment must be final "'as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Jefferson* v. *City of Tarrant,* 522 U. S. 75, 81 (1997) (quoting *Market Street R. Co.* v. *Railroad Comm'n of Cal.*, 324 U. S. 548, 551 (1945)). We have acknowledged, however, that certain state-court judgments can be treated as final for jurisdictional purposes, even though further

[4] The court also ruled that respondents were entitled to attorney's fees in their PDA action. See 144 Wash. 2d, at 745, 31 P. 3d, at 655–656.

proceedings are to take place in the state courts. *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 477–483 (1975) (outlining four exceptions to the finality rule). See also, *e. g.*, *ASARCO Inc.* v. *Kadish*, 490 U. S. 605, 611–612 (1989) (applying the *Cox* exceptions); *Duquesne Light Co.* v. *Barasch*, 488 U. S. 299, 306–307 (1989) (same).

Respondents contend the decision below did not result in a final judgment for purposes of § 1257(a) because the Washington Supreme Court remanded the case for further proceedings. They are only partially correct.

As we have already described, we have now before us a consolidated case consisting of two separate actions: an action under the State of Washington's Public Disclosure Act and a tort action. Respondents are correct that the decision below does not constitute a final judgment with respect to the tort action. In that case, the Washington Supreme Court resolved only a discovery dispute; it did not determine the final outcome of the litigation. Nor do any of the exceptions outlined in *Cox Broadcasting Corp.* v. *Cohn*, *supra*, apply to the tort action.[5] Accordingly, we dismiss the writ

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[5] With respect to the first *Cox* exception, the Washington Supreme Court's interpretation of § 409 is not conclusive and does not foreordain the outcome of the proceedings below, as petitioner might well be able to prove that its actions regarding the 168/B intersection were not negligent. *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 479 (1975). Moreover, petitioner's victory on the merits would moot the discovery issue; accordingly, the second *Cox* exception is not implicated. *Id.*, at 480. And, if petitioner does not prevail on the merits, it remains free to raise the discovery issue on appeal. Even if the Washington Supreme Court adheres to its interlocutory ruling as "law of the case," we would still be able to review the discovery issue once a final judgment has been entered. *Jefferson* v. *City of Tarrant*, 522 U. S. 75, 82–83 (1997). In short, the third *Cox* exception does not help petitioner either. 420 U. S., at 481. Finally, this is not a case where "reversal of the state court on the federal issue would be preclusive of any further litigation," *id.*, at 482–483, because respondents remain free to try their tort case without the disputed documents. Rather, the decision below controls "merely . . . the nature and

of certiorari with respect to the tort action for want of jurisdiction.

We reach a different conclusion regarding the PDA action. In that suit, the Washington Supreme Court was asked to review only the appellate court's ruling that four of the five documents requested by respondents were not protected under § 409 and therefore should be disclosed under the PDA.[6] Because the Washington Supreme Court held the 1995 amendment to § 409 to be invalid—thus, limiting the privilege offered by the statute only to documents originally created for § 152 purposes—the court effectively interpreted § 409 more narrowly than the Court of Appeals. Accordingly, the four documents at issue before the Washington Supreme Court remained unprotected under § 409 and continued to be subject to disclosure under the PDA. As we read the decision below, all that remains to be decided on remand in the PDA action is the amount of attorney's fees to which respondents are entitled. The PDA action, then, falls squarely under the first *Cox* exception because the Washington Supreme Court's ruling on the federal privilege issue is "conclusive" and "the outcome of further proceedings preordained."[7] *Cox Broadcasting Corp.*, *supra*, at 479.

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character of, or . . . the admissibility of evidence in, the state proceedings still to come." *Id.*, at 483. Thus, petitioner finds no refuge in the fourth *Cox* exception.

[6] Respondents did not seek review of the Court of Appeals' decision that one of the requested documents—a draft memorandum from the public works director to a county council member, see n. 3, *supra*—was in fact protected by § 409 because it contained information derived from § 152 activities. See 96 Wash. App. 862, 874, 982 P. 2d 123, 130 (1999). See also Reply to Brief in Opposition 2.

[7] Our reading of the decision below is reinforced by the Washington Supreme Court's ruling that respondents are entitled to attorney's fees for the PDA action. See n. 4, *supra.* Under state law, attorney's fees may not be awarded in a PDA action unless the prevailing party has "an affirmative judgment rendered in its favor at the conclusion of the entire case." *Overlake Fund* v. *Bellevue*, 70 Wash. App. 789, 795, 855 P. 2d 706, 710 (1993); see also *Tacoma News, Inc.* v. *Tacoma-Pierce County Health*

Therefore, we have jurisdiction to hear the PDA portion of this case.

III

We turn now to the merits. Petitioner essentially agrees with the Washington Supreme Court's expansive reading of § 409, but argues that the Washington Supreme Court erred in concluding that Congress was without power to enact the 1995 amendment to § 409. Before addressing the constitutional question, however, we must determine the statute's proper scope.

A

1

According to petitioner, a document initially prepared and then held by an agency (here the county sheriff) for purposes unrelated to § 152 becomes protected under § 409 when a copy of that document is collected by another agency (here the Public Works Department) for purposes of § 152. Under petitioner's view, for example, an accident report prepared and held by the county sheriff for purposes unrelated to § 152 would become protected under § 409 as soon as a copy of that report is sent to the Public Works Department to be used in connection with petitioner's § 152 funding application. Consequently, a person seeking a copy of the accident report either from the county sheriff or from the Public Works Department would not be able to obtain it.[8] Brief for Petitioner 37–44.

Dept., 55 Wash. App. 515, 525, 778 P. 2d 1066, 1071 (1989), review denied, 113 Wash. 2d 1037, 785 P. 2d 825 (1990) (Table). Thus, because the Washington Supreme Court held that respondents were entitled to attorney's fees in the PDA action, it must have considered the merits of that action to have been conclusively determined.

[8] Indeed, petitioner's brief could be read as suggesting that § 409 protects not only materials containing information collected for § 152 purposes but also any testimony regarding information contained in such materials. Brief for Petitioner 44. See also Brief for Respondents 20 (offering this reading as a possible interpretation of the statute). Under this view, an

Respondents contend that § 409 protects only materials actually created by the agency responsible for seeking federal funding for § 152 purposes. Brief for Respondents 22–23, and n. 2. On their view, if the Public Works Department collects reports of all the accidents that have occurred at a given intersection to prepare its § 152 application, those reports would not be protected by § 409, and a person seeking them from the Public Works Department would be entitled to obtain them.

The United States, as intervenor, proposes a third interpretation: § 409 protects all reports, surveys, schedules, lists, or data actually compiled *or* collected for § 152 purposes, but does not protect information that was originally compiled or collected for purposes unrelated to § 152 and that is currently held by the agencies that compiled or collected it, even if the information was at some point "collected" by another agency for § 152 purposes. Brief for United States 28–36. Respondents concede that this is a defensible reading of the statute. Brief for Respondents 23–24, 25. Under this interpretation, an accident report collected only for law enforcement purposes and held by the county sheriff would not be protected under § 409 in the hands of the county sheriff, even though that same report would be protected in the hands of the Public Works Department, so long as the department first obtained the report for § 152 purposes. We agree with the Government's interpretation of the statute.

2

We have often recognized that statutes establishing evidentiary privileges must be construed narrowly because privileges impede the search for the truth. *Baldrige* v. *Sha-*

officer who witnessed an accident would not be permitted to testify about that accident, if the officer summarized what he saw in a report that was later "collected" for § 152 purposes. But see Brief for Petitioner 45–46 (asserting that testimony derived from sources apart from the protected documents is permitted under § 409).

piro, 455 U. S. 345, 360 (1982) ("A statute granting a privilege is to be strictly construed so as 'to avoid a construction that would suppress otherwise competent evidence'" (quoting *St. Regis Paper Co.* v. *United States*, 368 U. S. 208, 218 (1961)). See also, *e. g.*, *University of Pennsylvania* v. *EEOC*, 493 U. S. 182, 189 (1990). See generally *United States* v. *Nixon*, 418 U. S. 683 (1974). Here, § 409 establishes a privilege; accordingly, to the extent the text of the statute permits, we must construe it narrowly.

Of the three interpretations outlined above, respondents' clearly gives the statute the narrowest application. Nevertheless, we decline to adopt it, as that reading would render the 1995 amendment to § 409 (changing the language from "compiled" to "compiled *or collected*") an exercise in futility. We have said before that, "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone* v. *INS*, 514 U. S. 386, 397 (1995). Yet, under respondents' view, § 409 as amended in 1995 would protect from disclosure only information that was already protected before the amendment, *i. e.*, information *generated* for § 152 purposes. That reading gives the amendment no "real and substantial effect" and, accordingly, cannot be the proper understanding of the statute.

Petitioner's reading, by contrast, while permissible, gives the statute too broad of a reach given the language of the statute, thus conflicting with our rule that, when possible, privileges should be construed narrowly. See, *e. g.*, *Baldrige*, *supra*, at 360.

The interpretation proposed by the Government, however, suffers neither of these faults. It gives effect to the 1995 amendment by making clear that § 409 protects not just the information an agency generates, *i. e.*, compiles, for § 152 purposes, but also any information that an agency collects from other sources for § 152 purposes. And, it also takes a narrower view of the privilege by making it inapplicable to information compiled or collected for purposes unrelated to

§ 152 and held by agencies that are not pursuing § 152 objectives. We therefore adopt this interpretation.

Our conclusion is reinforced by the history of the 1995 amendment. As we have already noted, the phrase "or collected" was added to § 409 to address confusion among the lower courts about the proper scope of § 409 and to overcome judicial reluctance to protect under § 409 raw data collected for § 152 purposes. See *supra*, at 134–136. By amending the statute, Congress wished to make clear that § 152 was not intended to be an effort-free tool in litigation against state and local governments. Compare, *e. g.*, *Robertson* v. *Union Pacific R. Co.*, 954 F. 2d 1433, 1435 (CA8 1992) (recognizing that § 409 was intended to "prohibit federally required record-keeping from being used as a 'tool . . . in private litigation'" (quoting *Light* v. *New York*, 149 Misc. 2d 75, 80, 560 N. Y. S. 2d 962, 965 (Ct. Cl. 1990)), with authorities cited *supra*, at 134–135. However, the text of § 409 evinces no intent to make plaintiffs worse off than they would have been had § 152 funding never existed. Put differently, there is no reason to interpret § 409 as prohibiting the disclosure of information compiled or collected for purposes unrelated to § 152, held by government agencies not involved in administering § 152, if, before § 152 was adopted, plaintiffs would have been free to obtain such information from those very agencies.

B

Having determined that § 409 protects only information compiled or collected for § 152 purposes, and does not protect information compiled or collected for purposes unrelated to § 152, as held by the agencies that compiled or collected that information, we now consider whether § 409 is a proper exercise of Congress' authority under the Constitution. We conclude that it is.

It is well established that the Commerce Clause gives Congress authority to "regulate the use of the channels of interstate commerce." *United States* v. *Lopez*, 514 U. S. 549, 558

(1995) (citing *United States* v. *Darby*, 312 U. S. 100, 114 (1941); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U. S. 241, 256 (1964)). In addition, under the Commerce Clause, Congress "is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *Lopez*, *supra*, at 558 (citing *Shreveport Rate Cases*, 234 U. S. 342 (1914); *Southern R. Co.* v. *United States*, 222 U. S. 20 (1911); *Perez* v. *United States*, 402 U. S. 146 (1971)).

As already discussed, *supra*, at 133, Congress adopted § 152 to assist state and local governments in reducing hazardous conditions in the Nation's channels of commerce. That effort was impeded, however, by the States' reluctance to comply fully with the requirements of § 152, as such compliance would make state and local governments easier targets for negligence actions by providing would-be plaintiffs a centralized location from which they could obtain much of the evidence necessary for such actions. In view of these circumstances, Congress could reasonably believe that adopting a measure eliminating an unforeseen side effect of the information-gathering requirement of § 152 would result in more diligent efforts to collect the relevant information, more candid discussions of hazardous locations, better informed decisionmaking, and, ultimately, greater safety on our Nation's roads. Consequently, both the original § 409 and the 1995 amendment can be viewed as legislation aimed at improving safety in the channels of commerce and increasing protection for the instrumentalities of interstate commerce. As such, they fall within Congress' Commerce Clause power.[9] Accordingly, the judgment of the Washing-

[9] Because we conclude that Congress had authority under the Commerce Clause to enact both the original § 409 and the 1995 amendment, we need not decide whether they could also be a proper exercise of Congress' authority under the Spending Clause or the Necessary and Proper Clause.

ton Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.[10]

It is so ordered.

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[10] Respondents contend in passing that § 409 violates the principles of dual sovereignty embodied in the Tenth Amendment because it prohibits a State from exercising its sovereign powers to establish discovery and admissibility rules to be used in state court for a state cause of action. See Brief for Respondents 44–46. The court below did not address this precise argument, reasoning instead that the 1995 amendment to § 409 was beyond Congress' enumerated powers. We ordinarily do not decide in the first instance issues not resolved below and decline to do so here. See, *e. g.*, *National Collegiate Athletic Assn.* v. *Smith*, 525 U. S. 459, 470 (1999). Moreover, in light of our disposition on this issue, we need not address the second question on which we granted certiorari: whether private plaintiffs have standing to assert "states' rights" under the Tenth Amendment where their States' legislative and executive branches expressly approve and accept the benefits and terms of the federal statute in question.

Syllabus

BARNHART, COMMISSIONER OF SOCIAL SECURITY *v.* PEABODY COAL CO. ET AL.

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

No. 01–705. Argued October 8, 2002—Decided January 15, 2003*

Under the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), the Commissioner of Social Security "shall, before October 1, 1993," assign each coal industry retiree eligible for benefits under the Act to an extant operating company—a "signatory operator"—or a related entity, which shall then be responsible for funding the beneficiary's benefits, 26 U. S. C. § 9706(a). Assignment to a signatory operator binds the operator to pay an annual premium to the United Mine Workers of America Combined Benefit Fund (Combined Fund), which administers the benefits. The premium has up to three components, a health benefit premium, a death benefit premium, and a premium for retirees who are not assigned to a particular operator, but whose benefits are paid from the Combined Fund as if they were assigned. An important object of the Coal Act was providing stable funding for the health benefits of such "orphan retirees." Although signatory operators will only be required to pay an unassigned beneficiaries premium if funding from the United Mine Workers of America 1950 Pension Plan (UMWA Pension Plan) and the Abandoned Mine Land Reclamation Fund (AML Fund) runs out, each signatory operator's unassigned beneficiaries premium is based on the number of its assigned beneficiaries, such that the signatory with the most assigned retirees would be required to cover the greatest share of the benefits payable to unassigned beneficiaries. In two separate actions before different District Courts, respondent companies challenged initial assignments made to them after the October 1, 1993, deadline, claiming that the date set a time limit on the Commissioner's assignment power, so that a beneficiary not assigned on that date must be left unassigned for life. If the challenged assignments are void, the corresponding benefits must be financed by transfers from the UMWA Pension Plan, the AML Fund, and, if necessary, unassigned beneficiaries premiums paid by signatory operators to whom

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*Together with *Barnhart, Commissioner of Social Security* v. *Bellaire Corp. et al.* (see this Court's Rule 12.4), and No. 01–715, *Holland et al.* v. *Bellaire Corp. et al.*, also on certiorari to the same court.

timely assignments were made. The companies obtained summary judgments, and the Sixth Circuit affirmed.

Held: Initial assignments made after October 1, 1993, are valid despite their untimeliness. Pp. 157–172.

(a) The companies' contention that the Commissioner's failure is "jurisdictional," so that affected beneficiaries may never be assigned and their former employers may go scot free, is as unsupportable as it is counterintuitive. Pp. 157–171.

(1) This Court has rejected an argument comparable to the companies' position that couching the duty in terms of the mandatory "shall" together with a specific deadline leaves the Commissioner with no authority to make an initial assignment on or after October 1, 1993. In *Brock* v. *Pierce County*, 476 U. S. 253, the Court found that the Secretary of Labor's 120-day deadline to issue a final determination on a complaint of federal grant fund misuse was meant to spur him to action, not limit the scope of his authority, so that his untimely action was valid. Nor, since *Brock*, has this Court ever construed a provision that the Government "shall" act within a specified time, without more, as a jurisdictional limit precluding action later. If a statute does not specify a consequence for noncompliance with statutory timing provisions, federal courts will not ordinarily impose their own coercive sanction. *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 63. Hence the oddity of a claim at this date that late official action should shift financial burdens from otherwise responsible private purses to the public fisc, let alone siphon money from funds set aside for a different public purpose, like the AML Fund for land reclamation. The point would be the same even if *Brock* were the only case on the subject. The Coal Act was passed six years after *Brock*, when Congress was presumably aware that the Court does not readily infer congressional intent to limit an agency's power to finish a mandatory job merely from a specification to act by a certain time. Nothing more limiting than "shall" is to be found in the Coal Act: no express language supports the companies, while structure, purpose, and legislative history go against them. Structural clues support the Commissioner in the Act's other instances of combining "shall" with a specific date that could not possibly be read to prohibit action outside the statutory period. See §§ 9705(a)(1), 9702(a)(1), 9704(h). In each of these instances, a conclusion is based on plausibility grounds: had Congress meant to set a counterintuitive limit on authority to act, it would have said more than it did, and would surely not have couched its intent in language *Brock* had already held to lack any clear jurisdictional significance. Pp. 157–163.

Syllabus

(2) The result of appealing to plausibility is not affected by either of the other textual features that the companies argue indicate inability to assign beneficiaries after October 1, 1993. Pp. 163–171.

(i) The provision for unassigned beneficiary status, § 9704(d), cannot be characterized as the specification of a "consequence" for failure to assign a beneficiary to an operator or related person. It speaks not in terms of the Commissioner's failure to assign beneficiaries but simply of "beneficiaries who are not assigned." The most obvious reason for such unassigned status is a former employer's disappearance. This is not to say that a failure of timely assignment does not also leave a beneficiary "unassigned." It simply means that unassigned status has no significance peculiar to failure of timely assignment. In addition, to the extent that unassigned status is a consequence of mere untimeliness, the most obvious reason for specifying that consequence is not a supposed desire for finality but a default rule telling the Social Security Administration what funding source to use in the absence of any other. It is unrealistic to think that Congress understood unassigned status as an enduring consequence of uncompleted work, for nothing indicates that it foresaw that some beneficiaries matchable with operators still in business might not be assigned by the deadline. In the one instance where Congress clearly weighed finality on October 1, 1993, against accuracy of initial assignments, accuracy won, see §§ 9704(d), (f); and the companies' attempts to limit this apparent preference for accuracy fail. Pp. 163–169.

(ii) The provision that an operator's contribution for the benefit of the unassigned shall be calculated based on "assignments as of October 1, 1993," § 9704(f)(1), does not mean that an assigned operator's percentage of potential liability for the benefit of the unassigned is fixed according to the assignments made at that date. "[A]s of" need not mean, as the companies contend, "as assignments actually stand" on that date, but can mean assignments as they shall be on that date, assuming the Commissioner complies with Congress's command. Since there is no "plain" reading, there is nothing left of this "as of" argument except its stress that the applicable percentage can be modified only in accordance with exceptions for initial error or an assignee operator's demise. And the enunciation of two exceptions does not imply the exclusion of a third when there is no reason to think that Congress considered such an exclusion and there is good reason to conclude that Congress did not foresee a failure to make timely assignments. Pp. 170–171.

(b) The Coal Act was designed to allocate the greatest number of beneficiaries to a prior responsible operator. The way to reach this objective is to read the statutory date as a spur to prompt action, not as a bar to tardy completion of the business of ensuring that benefits

are funded, as much as possible, by those principally responsible. Pp. 171–172.

14 Fed. Appx. 393 (first judgment) and 424 (second judgment), reversed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined, *post*, p. 172. THOMAS, J., filed a dissenting opinion, *post*, p. 184.

Barbara B. McDowell argued the cause for petitioner in No. 01–705. On the briefs were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Kneedler*, *Paul R. Q. Wolfson*, *William Kanter*, and *Jeffrey Clair*.

Peter Buscemi argued the cause for petitioners in No. 01–715. With him on the briefs were *John R. Mooney* and *David W. Allen*.

John G. Roberts, Jr., argued the cause for Peabody Coal Co. et al., respondents in No. 01–705. With him on the brief were *Lorane F. Hebert* and *W. Gregory Mott*. *Jeffrey S. Sutton* argued the cause for Bellaire Corp. et al., respondents in both cases. With him on the brief were *Brian G. Selden*, *Louis A. Chaiten*, and *Thomas A. Smock*.†

JUSTICE SOUTER delivered the opinion of the Court.

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act) includes the present 26 U. S. C. § 9706(a), providing generally that the Commissioner of Social Security "shall, before October 1, 1993," assign each coal industry retiree eligible for benefits to an extant operating company or a "related" entity, which shall then be responsible for funding the assigned beneficiary's benefits. The question is whether an initial assignment made after that date is valid despite its untimeliness. We hold that it is.

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†*Mary Lou Smith* filed a brief for Elgin National Industries, Inc., as *amicus curiae* urging affirmance.

I

We have spoken about portions of the Coal Act in two recent cases, *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438 (2002), and *Eastern Enterprises* v. *Apfel*, 524 U. S. 498 (1998), the first of which sketches the Act's history, 534 U. S., at 442–447. Here, it is enough to recall that in its current form the Act requires the Commissioner to assign, where possible, every coal industry retiree to a "signatory operator," defined as a signatory of a coal wage agreement specified in § 9701(b)(1). §§ 9701(c)(1), 9706(a). An assignment should turn on a retiree's employment history with a particular operator, § 9706(a), unless an appropriate signatory is no longer in business, in which case the proper assignee is a "related person" of that operator, defined in terms of corporate associations and relationships not in issue here, § 9701(c)(2).[1] The Act recognizes that some retirees will be "unassigned." § 9704(d).

Assignment to a signatory operator binds the operator to pay an annual premium to the United Mine Workers of America Combined Benefit Fund, established under the Act to administer benefits. § 9702. The premium has up to three components, starting with a "health benefit premium," computed by multiplying the number of assigned retirees by the year's "per beneficiary" premium, set by the Commissioner and based on the Combined Fund's health benefit expenses for the prior year, adjusted for changes in the Consumer Price Index. § 9704(b). The second element is a "death benefit premium" for projected benefits to the retirees' survivors, the premium being the operator's share of "the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage." § 9704(c).

[1] The Coal Act's definition of "related persons" was the subject of our opinion last Term in *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438 (2002). For simplicity, we will not refer to related persons separately in the balance of this opinion.

A possible third constituent of the premium is for retirees who are not assigned to a particular operator, whose health and death benefits are nonetheless paid from the Combined Fund as if they were assigned beneficiaries. Before passage of the Coal Act, many operators withdrew from coal wage agreements, shifting the costs of paying for their retirees' benefits to the remaining signatories, *Sigmon Coal Co.*, *supra*, at 444, and an important object of the Coal Act was providing stable funding for the health benefits of these "orphan retirees," House Committee on Ways and Means, Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992, 104th Cong., 1st Sess., 1 (Comm. Print 1995) (hereinafter Coal Act Implementation). See Energy Policy Act of 1992, Pub. L. 102–486, § 19142, 106 Stat. 3037 (intent to "stabilize plan funding" and "provide for the continuation of a privately financed self-sufficient program").

Before signatory operators may be compelled to contribute for the benefit of unassigned beneficiaries, however, funding from two other sources must run out. The United Mine Workers of America 1950 Pension Plan (UMWA Pension Plan) was required to make three substantial payments to the Combined Fund for this purpose on February 1, 1993, October 1, 1993, and October 1, 1994. § 9705(a)(1). The Act also calls for yearly payments to the Combined Fund from the Abandoned Mine Land Reclamation Fund (AML Fund), established for reclamation and restoration of land and water resources degraded by coal mining. 30 U. S. C. § 1231(c). Annual transfers from this AML Fund are limited to the greater of $70 million and the annual interest earned by the fund, and are subject to an aggregate limit equal to the amount of interest earned on the AML Fund between September 30, 1992, and October 1, 1995. §§ 1232(h)(2), (3)(B).

So far, these transfers from the UMWA Pension Plan and the AML Fund have covered the benefits of all unassigned beneficiaries. If they fall short, however, the third source comes into play (and the third element of an operator's Com-

bined Fund premium becomes actual): all assignee operators (that is, operators with assigned retirees) will have to pay an "unassigned beneficiaries premium," being their applicable percentage portion of the amount needed to pay annual benefits for the unassigned. An operator's "applicable percentage" is defined as "the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993)." 26 U. S. C. § 9704(f)(1). The signatory with the most assigned retirees thus would cover the greatest share of the benefits payable to the unassigned (as well as their spouses and certain dependants).[2]

II

Although § 9706 provides that the Commissioner "shall" complete all assignments before October 1, 1993, the Commissioner did not, and she now estimates that some 10,000 beneficiaries were first assigned to signatory operators after the statutory date. The parties disagree on the reason the Commissioner failed to meet the deadline, but that dispute need not be resolved here.[3]

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[2] According to a 1995 congressional Report, the total premium for a single beneficiary was $2,349.38 for the 1995 fiscal year. This figure includes only the health and death benefit premiums, since no unassigned beneficiaries premium has yet been charged. Coal Act Implementation 32–33. The 2002 per-beneficiary premium was approximately $2,725. General Accounting Office Report No. 02–243, Retired Coal Miners' Health Benefit Funds: Financial Challenges Continue 8 (Apr. 2002).

[3] The Commissioner's proffered reason for the delay is that the Social Security Administration (SSA) was not permitted to expend appropriated funds to commence work on assignments until July 13, 1993, when Congress enacted the Supplemental Appropriations Act of 1993, Pub. L. 103–50, 107 Stat. 254. The Commissioner also states that the task of researching employment records for approximately 80,000 coal industry workers in order to determine the appropriate signatory operators was monumental and could not have been completed by October 1, 1993, without additional resources. The respondent companies counter that the Acting

After October 1, 1993, the Commissioner assigned 330 beneficiaries to respondents Peabody Coal Company and Eastern Associated Coal Corp., and a total of 270 beneficiaries to respondents Bellaire Corporation, NACCO Industries, Inc., and The North American Coal Corporation. These companies challenged the assignments in two separate actions before different District Courts, claiming that the statutory date sets a time limit on the Commissioner's power to assign, so that a beneficiary not assigned on October 1, 1993 (and the beneficiary's eligible dependants) must be left unassigned for life. If the respondent companies are right, the challenged assignments are void and the corresponding benefits must be financed not by them, but by the transfers from the UMWA Pension Plan and the AML Fund and, if necessary, by unassigned beneficiary premiums paid by other signatory operators to whom timely assignments were made.

The Commissioner denied that Congress intended the Commissioner's tardiness in assignments to impose a permanent charge on the public AML Fund, otherwise earmarked for reclamation, or to raise the threat of permanently heavier financial burdens on companies that happened to get assignments before October 1, 1993. The Commissioner argued that Congress primarily intended coal operators to pay for their own retirees. The trustees of the Combined Fund in-

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Commissioner assured Congress less than a month before the statutory date that SSA would meet its "statutory responsibility" to complete the assignments on time. Hearing on Provisions Relating to the Health Benefits of Retired Coal Miners before the House Ways and Means Committee, 103d Cong., 1st Sess., 26 (1993) (hereinafter 1993 Coal Act Hearing), Ser. No. 103–59, p. 26 (Comm. Print 1994) (statement of Acting Commissioner Thompson). The same representative informed Congress in 1995 that SSA had "completed the process of making the initial assignment decisions by October 1, 1993, as required by law." Hearing on the Coal Industry Retiree Health Benefit Act of 1992 before the Subcommittee on Oversight of the House Committee on Ways and Means, 104th Cong., 1st Sess., 23 (1995), Ser. No. 104–67, p. 23 (1997) (statement of Principal Deputy Commissioner Thompson).

tervened in one of the cases and took the Commissioner's view that initial assignments made after September 30, 1993, are valid.[4]

The companies obtained summary judgments in each case, on the authority of *Dixie Fuel Co.* v. *Commissioner of Social Security*, 171 F. 3d 1052 (CA6 1999), which went against the Commissioner on the issue here. The United States Court of Appeals for the Sixth Circuit affirmed in two opinions likewise following *Dixie Fuel—Peabody Coal Co.* v. *Massanari*, 14 Fed. Appx. 393 (2001), and *Bellaire Corp.* v. *Massanari*, 14 Fed. Appx. 424 (2001)—but conflicting with the Fourth Circuit's holding in *Holland* v. *Pardee Coal Co.*, 269 F. 3d 424 (2001). We granted certiorari to resolve the conflict,[5] 534 U. S. 1112 (2002), and now reverse.

III

It misses the point simply to argue that the October 1, 1993, date was "mandatory," "imperative," or a "deadline," as of course it was, however unrealistic the mandate may have been. The Commissioner had no discretion to choose to leave assignments until after the prescribed date, and the assignments in issue here represent a default on a statutory duty, though it may well be a wholly blameless one. But the failure to act on schedule merely raises the real question, which is what the consequence of tardiness should be. The respondent companies call the failure "jurisdictional," such that the affected beneficiaries (like truly orphan beneficiaries) may never be assigned, but instead must be permanent

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[4] The General Accounting Office estimated in 2000 that invalidation of assignments made after September 30, 1993, could require the Combined Fund to refund $57 million in premium payments. Letter of Gloria L. Jarmon to Hon. William V. Roth, Jr., Senate Committee on Finance 2 (Aug. 15, 2000), http://www.gao.gov/new.items/ai00267r.pdf (as visited Jan. 9, 2003) (available in Clerk of Court's case file).

[5] After the grant of certiorari, the United States Court of Appeals for the Third Circuit came down on the side of the Fourth Circuit. See *Shenango Inc.* v. *Apfel*, 307 F. 3d 174 (2002).

wards of the UMWA Pension Plan, the AML Fund, and, potentially, of coal operators without prior relationship to these beneficiaries. The companies, in other words, say that as to tardily assigned beneficiaries who were, perhaps, formerly their own employees, they go scot free. We think the claim is as unsupportable as it is counterintuitive.

A

First there is the companies' position that couching the duty in terms of the mandatory "shall" together with a specific deadline leaves the Commissioner with no authority to make an initial assignment on or after October 1, 1993. We rejected a comparable argument in *Brock* v. *Pierce County*, 476 U. S. 253 (1986), dealing with the power of the Secretary of Labor to audit a grant recipient under a provision that he "'shall' issue a final determination . . . within 120 days" of receiving a complaint alleging misuse of federal grant funds. *Id.*, at 255. Like the Court of Appeals here, the Ninth Circuit in *Brock* thought the mandate and deadline together implied that Congress "had intended to prevent the Secretary from acting" after the statutory period, *id.*, at 257. We, on the contrary, expressed reluctance "to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake," *id.*, at 260, and reversed. As in this litigation, the Secretary's responsibility in *Brock* was "substantial," the "ability to complete it within 120 days [was] subject to factors beyond [the Secretary's] control," and "the Secretary's delay, under respondent's theory, would prejudice the rights of the taxpaying public." *Id.*, at 261. We accordingly read the 120-day provision as meant "to spur the Secretary to action, not to limit the scope of his authority," so that untimely action was still valid. *Id.*, at 265.

Nor, since *Brock*, have we ever construed a provision that the Government "shall" act within a specified time, without more, as a jurisdictional limit precluding action later. Thus,

a provision that a detention hearing "'shall be held immediately upon the [detainee's] first appearance before the judicial officer'" did not bar detention after a tardy hearing, *United States* v. *Montalvo-Murillo*, 495 U. S. 711, 714 (1990) (quoting 18 U. S. C. § 3142(f)), and a mandate that the Secretary of Health and Human Services "'shall report'" within a certain time did "not mean that [the] official lacked power to act beyond it," *Regions Hospital* v. *Shalala*, 522 U. S. 448, 459, n. 3 (1998).

We have summed up this way: "if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction." *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 63 (1993).[6]

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[6] No one could disagree with JUSTICE SCALIA that "[w]hen a power is conferred for a limited time, the *automatic* consequence of the expiration of that time is the expiration of the power," *post*, at 174–175 (dissenting opinion), but his assumption that the Commissioner's power to assign retirees was "conferred for a limited time" assumes away the very question to be decided. JUSTICE SCALIA's dissent is an elaboration on this circularity, forever returning as it must to his postulate that § 9706(a) constitutes a "time-limited mandate" that "expired" on the statutory date. *Post*, at 177, 178.

JUSTICE SCALIA's closest approach to a nonconclusory justification for his position is the assertion of an entirely formal interpretive rule that a date figuring in the same statutory subsection as the creation of a mandatory obligation *ipso facto* negates any power of tardy performance. *Post*, at 176–177. JUSTICE SCALIA cites no authority for his formalism, which is contradicted by *United States* v. *Montalvo-Murillo*, 495 U. S. 711 (1990), where a single statutory subsection provided that a judicial officer "shall hold a hearing" and that "[t]he hearing shall be held immediately upon the person's first appearance before the judicial officer." *Id.*, at 714 (quoting 18 U. S. C. § 3142(f)). Conversely, *Brock* v. *Pierce County*, 476 U. S. 253 (1986), *United States* v. *James Daniel Good Real Property*, 510 U. S. 43 (1993), and *Regions Hospital* v. *Shalala*, 522 U. S. 448 (1998), ascribed no significance to the formal placement of the time limitation. One can only ask why a statute providing that "The obligor shall perform its duty before October 1, 1993," should be thought to differ fundamentally from one providing that "(i) The obligor shall perform its duty. (ii) The obligor's

Hence the oddity at this date of a claim that late official action should shift financial burdens from otherwise responsible private purses to the public fisc, let alone siphon money from funds set aside expressly for a different public purpose, like the AML Fund for land reclamation. The point would be the same, however, even if *Brock* were the only case on the subject. The Coal Act was adopted six years after *Brock* came down, when Congress was presumably aware that we do not readily infer congressional intent to limit an agency's power to get a mandatory job done merely from a specification to act by a certain time. See *United States* v. *Wells*, 519 U. S. 482, 495 (1997).[7] The *Brock* example conse-

duty shall be performed before October 1, 1993." The accepted fact is that some time limits are jurisdictional even though expressed in a separate statutory section from jurisdictional grants, see, *e. g.*, 28 U. S. C. § 1291 (providing that the courts of appeals "shall have jurisdiction of appeals from all final decisions of the district courts of the United States"); § 2107 (providing that notice of appeal in civil cases must be filed "within thirty days after the entry of such judgment"); *Browder* v. *Director, Dept. of Corrections of Ill.*, 434 U. S. 257, 264 (1978) (stating that the limitation in § 2107 is "'mandatory and jurisdictional'" (citation omitted)), while others are not, even when incorporated into the jurisdictional provision, see, *e. g.*, *Montalvo-Murillo*, *supra.* Formalistic rules do not account for the difference, which is explained by contextual and historical indications of what Congress meant to accomplish. Here that intent is revealed in several obvious ways: in rules that define an operator's liability in terms of employment history, see § 9706(a), in appellate rights to test the appropriateness of an initial assignment, see *infra*, at 167, and in the expressed understanding that the companies that got the benefit of a worker's labor should pay for the worker's benefits, see *infra*, at 164–166. What else, after all, would anyone naturally expect? As opposed to the sensible indications that the initial assignment deadline was not meant to be jurisdictional, JUSTICE SCALIA's new formal rule would thwart the statute's object and relieve the respondent companies of all responsibility, which other, less lucky operators might be required to shoulder. There undoubtedly was much political compromise in the development of the Coal Act, but politics does not justify turning the process of initial assignment into a game of chance.

[7] The respondent companies attempt to distinguish *Brock* because we noted in that case that an aggrieved party could sue under the Administrative Procedure Act to "'compel agency action unlawfully withheld or un-

quently has to mean that a statute directing official action needs more than a mandatory "shall" before the grant of power can sensibly be read to expire when the job is supposed to be done. Nothing so limiting, however, is to be found in the Coal Act: no express language supports the companies, while structure, purpose, and legislative history go against them.

Structural clues support the Commissioner in the Coal Act's other instances of combining the word "shall" with a specific date that could not possibly be read to prohibit action outside the statutory period. Congress, for example, provided that the UMWA Pension Plan "shall transfer to the Combined Fund" installments of $70 million on February 1, 1993, on October 1, 1993, and on October 1, 1994. § 9705(a)(1). It could not be that a failure to make a transfer on one of those precise dates, for whatever reason, would have left the UMWA Pension Plan with no authority to make the payment; October 1, 1994, was not even a business day. Or consider the Act's mandatory provisions that the trustees of the Combined Fund "shall" be designated no later than 60 days from the enactment date, § 9702(a)(1), and that the designated trustees "shall, not later than 60 days after the enactment date," give the Commissioner certain information about benefits, § 9704(h). No one could seriously argue that the entire scheme would have been nullified if appointments had been left to the 61st day, or that trustees (whose appoint-

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reasonably delayed,'" 476 U. S., at 260, n. 7 (quoting 5 U. S. C. § 706(1)). The companies assert that no such remedy would have applied to the Commissioner's duty under § 9706(a). Whether or not this is the case, the companies do not argue that they were aggrieved by the failure to assign retirees by the statutory date. On the contrary, they temporarily avoided payment of premium amounts for which they would indisputably have been liable had the assignments been timely made. It therefore does not appear that there was a need to provide operators "with any remedy at all—much less the drastic remedy respondent[s] see[k] in this case—for the [Commissioner's] failure to meet the [October 1, 1993] deadline." 476 U. S., at 260, n. 7.

ments could properly have been left to the 60th day) were powerless to divulge information to the SSA after the 60-day period had expired.[8]

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[8] JUSTICE SCALIA concedes that his theory should not extend so far as to limit the UMWA Pension Plan's duty to transfer funds to the Combined Fund to the particular dates in § 9705(a)(1). JUSTICE SCALIA attempts to avoid such an outcome by assuming, without basis, that the "UMWA Pension Plan has the power to transfer funds" to the Combined Fund in the absence of the authorization in § 9705(a)(1). *Post*, at 176 (dissenting opinion). JUSTICE SCALIA's confidence is misplaced. Prior to the Coal Act's enactment, the Vice Chairman of the Secretary of Labor's Coal Commission testified before Congress that legislative authorization was needed for such a transfer to occur: "One of the things that concerned the Commission was, first of all, our understanding of the present state of law under the Employee Retirement Income Security Act. Under that Act it is not within the power of any of the participants or signatories to transfer a pension surplus to a benefit fund. That is one of the reasons for the recommendation that a transfer be authorized." Hearing before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong., 1st Sess., 13 (1991) (statement of Coal Commission Vice Chairman Perritt). It appears, then, that § 9705(a)(1) provides both the UMWA Pension Plan's power to act and a time limit, which according to JUSTICE SCALIA would render action on any other date ultra vires, a result that even the dissent does not embrace.

JUSTICE SCALIA thinks it "debatable" that the power to appoint initial trustees survives the deadline in § 9702(a)(1). *Post*, at 177. In order to avoid the embarrassment of concluding that tardiness would remove all authority to appoint the initial trustees, which would render the Act a dead letter, he suggests that an initial trustee could be appointed under § 9702(b)(2), even though that provision applies only to appointment of a "successor trustee" to be made "in the same manner as the trustee being succeeded," whereas an initial trustee does not "succeed" anyone. The extreme implausibility of JUSTICE SCALIA's suggested reading of § 9702(b)(2) points up the unreasonableness of placing a jurisdictional gloss on the § 9706(a) time limitation. It is impossible to believe that Congress meant its Herculean effort to resolve the coal industry benefit crisis to come to absolutely nothing if trustees were designated late.

There is a basic lesson to be learned from JUSTICE SCALIA's contortions to avoid the untoward results flowing from his formalistic theory that time limits on mandatory official action are always jurisdictional when they

In each of these instances, we draw a conclusion on grounds of plausibility: if Congress had meant to set a counterintuitive limit on authority to act, it would have said more than it did, and would surely not have couched its intent in language *Brock* had already held to lack any clear jurisdictional significance. The same may be said here.

B

Nor do we think the result of appealing to plausibility is affected by either of two other textual features that the companies take as indicating inability to assign beneficiaries after the statutory date: the provision for unassigned beneficiary status itself, and the provision that an operator's contribution for the benefit of the unassigned shall be calculated "on the basis of assignments as of October 1, 1993." §§ 9704(f)(1), (2).

1

The companies characterize the provision for unassigned beneficiaries as the specification of a "consequence" for failure to assign a beneficiary to an operator or related person. Cf. *Brock*, 476 U. S., at 259. Specifying this consequence of failure, they say, shows that the failure must be governed by the consequence provided, not corrected by a tardy assignment corresponding to one that should have been made earlier. The specified consequence, in other words, reflects a legislative preference for finality over accurate initial assignments and creates a right on the part of the companies to rely permanently on the state of affairs as they were on October 1, 1993. We think this line of reasoning is unsound at every step.

To begin with, whatever might be inferable from the fact that a specific provision addressed the failure to make a

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occur in an authorizing provision. The lesson is that something is very wrong with the theory.

timely assignment, the part of the Act referring to "unassigned" beneficiaries is not any such provision. The Act speaks of the beneficiaries not in terms of the Commissioner's failure to assign them in time, but simply as "beneficiaries who are not assigned." § 9704(d). The most obvious reason for beneficiaries' being unassigned, in fact, is the disappearance of a beneficiary's former employer, leaving no signatory operator for assignment under § 9706(a). This is not to say that failure of timely assignment does not also leave a beneficiary "unassigned" under the Act. It simply means that unassigned status has no significance peculiar to failure of timely assignment.

Second, to the extent that "unassigned" status is a consequence of mere untimeliness, there would be a far more obvious reason for specifying that consequence than a supposed desire for finality.[9] On its face, the provision for a beneficiary left out through tardiness functions simply as a default rule to provide coverage under the new regime required to be in place by October 1, 1993; there had to be some source of funding for every beneficiary by then, and provisions for the "unassigned" employees tell the SSA what the source will be in the absence of any other. But we do not read a provision apparently made for want of something better as an absolute command to forgo something better for all time.

In fact, it is unrealistic to think that Congress understood unassigned status as an enduring "consequence" of uncompleted work, for nothing indicates that Congress even foresaw that some beneficiaries matchable with operators still in

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[9] Many "consequences," of course, are intended to induce an obligated person to take untimely action rather than bar that action altogether. Section 9704(i)(1)(C), for example, denies certain tax deductions to operators who fail to make contributions during specified periods, and § 9707(a) provides a penalty for operators who fail to pay premiums on time. The first consequence is eliminated when the operator takes action that is necessarily untimely, and the second penalty ceases to run when the premiums are paid, albeit out of time.

business might not be assigned before October 1, 1993. As the companies themselves point out, the Commissioner led Congress to believe as late as 1995 that all possible assignments had been made on time, see n. 3, *supra*, and such little legislative history as there is on the point tends to show that Congress assumed that any assignments that could be made at all (say, to an operator still in business) would be made on time. On October 8, 1992, on the heels of the Conference Committee Report on the Act and just before the vote in the Senate adopting the Act, Senator Wallop gave a detailed explanation of the Coal Act's provisions for unassigned beneficiaries, which assumed that the "unassigned" would be true orphans:

> "As a practical matter, not all beneficiaries can be assigned to a specific last signatory operator, related person or assigned operator for payment purposes. This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses. Thus, provisions are made for unassigned beneficiary premiums." 138 Cong. Rec. 34003 (1992).

The Senator's report says that the transfer to the Combined Fund from the UMWA Pension Plan and AML Fund would be made because "unassigned beneficiaries were not employed by the assigned operators at the time of their retirement . . . . [I]f no operator remains in business under the formulations described above, that retiree becomes an unassigned beneficiary. . . . [The Coal Act's] purpose is to assure that any beneficiary, once assigned, remains the responsibility of a particular operator, and that the number of unassigned beneficiaries is kept to an absolute minimum." *Ibid.*[10] It seems not to have crossed Congress's mind that

[10] Postenactment statements, though entitled to less weight, are to the same effect. At a hearing before the House Committee of Ways and Means on September 9, 1993, one member asked whether SSA had estab-

the category of the "unassigned" would include beneficiaries, let alone a lot of beneficiaries, who could be connected with an operator, albeit late. Providing a consequence of default was apparently just happenstance.[11]

Congress plainly did, however, weigh finality on October 1, 1993, against accuracy of initial assignments in one circumstance, and accuracy won. Section 9704(d) speaks of "beneficiaries who are not assigned . . . for [any] plan year," sug-

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lished procedures "to assure that beneficiaries are not improperly designated as unassigned." The Acting Commissioner of Social Security responded that employee training "emphasized that the intent of the Coal Act was to assign miners to mine operators if at all possible." 1993 Coal Act Hearing 46 (statements of Rep. Johnson and Acting Commissioner Thompson). The record of the hearing also contains a statement by the committee chairman that the Act required operators to "pay for their own retirees, and to assume a proportionate share of the liability for true 'orphans'—retirees whose companies are no longer in existence and cannot pay for the benefits." *Id.*, at 85. At no point did any witness suggest that the unassigned beneficiary system was intended for miners who could be assigned but were not assigned before October 1, 1993, or that such miners would remain unassigned in perpetuity in order to protect the status quo on that date.

[11] The respondent companies cite a postenactment statement by Representative Johnson that Congress had an obligation to "make sure that companies . . . have time to figure out their liability and prepare to deal with it." *Id.*, at 42. The Representative's comment did not purport to interpret the Coal Act as adopted, however, but was made in discussing whether "there should be some resolution passed" to give coal operators more time to prepare for their Coal Act obligations. *Ibid.*

One statement in Senator Wallop's preenactment report, which the companies do not cite, indicates an understanding that assignments would be fixed after October 1, 1993. See 138 Cong. Rec. 34003 (1992) ("[T]he percentage of the unassigned beneficiary premiums allocable to each assigned operator on October 1, 1993 will remain fixed in future years"). As discussed, however, there is no indication that Congress foresaw that the Commissioner would be unable to complete assignments by the statutory date. A general statement made on the assumption that all assignments that could ever be made would be made before October 1, 1993, does not show a legislative preference for finality over accuracy now that that assumption has proven incorrect.

gesting that assignment status may change from year to year. One way it may change is by correcting an erroneous assignment. Under the Act, an operator getting notice of an assignment has 30 days to request information regarding the basis of the assignment and then 30 days from receipt of that information to ask for reconsideration. §§ 9706(f)(1)–(2). If the Commissioner finds error, the Combined Fund trustees will fix it by reducing premiums and refunding any overpayments. § 9706(f)(3)(A)(i); see also § 9706(f)(3)(A)(ii). Nothing is said about finality on October 1, 1993, and no time limit whatever is imposed on the Commissioner's authority to reassign. The companies concede, as they must, that the statute permits reassignment after October 1, 1993.

The companies do, however, try to limit the apparent preference for accuracy by arguing that one feature of this provision for reconsideration in § 9706(f) implicitly supports them; this specific and isolated exception to an otherwise unequivocal bar to assignments after the statutory date suggests, they say, that the bar is otherwise absolute. Again, we think no such conclusion follows.

First, the argument is circular; it assumes that the availability of the § 9706(f) reconsideration process with no time limit is an exception to a bar on all assignment activity imposed by the October 1, 1993, time limit of § 9706(a). But the question, after all, is whether the October 1, 1993, mandate is in fact a bar. Section 9706(f) does not say it is, and nothing in that provision suggests it was enacted as an exception to the October 1, 1993, date. It has no language about operating notwithstanding the date specified in § 9706(a); on the contrary, it states that reassignment will be made "under subsection (a)," § 9706(f)(3)(A)(ii). But if the authority to reassign is contained in § 9706(a), then § 9706(f) is reasonably read not as lifting a jurisdictional time bar but simply as specifying a procedure for an aggrieved operator to follow in requesting the Commissioner to exercise the assignment power contained in § 9706(a) all along. In the com-

bined operation of the two subsections, there is thus no implication that the Commissioner is powerless to make an initial assignment to an operator after the specified date; any suggestion goes the other way.

Second, there is no reason to read the provision in § 9706(f) for correction of erroneous assignments as implying that the Commissioner should not employ her § 9706(a) authority to make a tardy initial assignment in a situation like this. We do not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it. *United Dominion Industries, Inc.* v. *United States*, 532 U. S. 822, 836 (2001). As we have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an "associated group or series," justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence. *United States* v. *Vonn*, 535 U. S. 55, 65 (2002). We explained this point as recently as last Term's unanimous opinion in *Chevron U. S. A. Inc.* v. *Echazabal*, 536 U. S. 73, 81 (2002):

> "Just as statutory language suggesting exclusiveness is missing, so is that essential extrastatutory ingredient of an expression-exclusion demonstration, the series of terms from which an omission bespeaks a negative implication. The canon depends on identifying a series of two or more terms or things that should be understood to go hand in hand, which [is] abridged in circumstances supporting a sensible inference that the term left out must have been meant to be excluded. E. Crawford, Construction of Statutes 337 (1940) (*expressio unius* '"properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference"' (quoting *State ex rel. Curtis* v. *De Corps*,

134 Ohio St. 295, 299, 16 N. E. 2d 459, 462 (1938))); *United States* v. *Vonn*, *supra*."

As in *Echazabal*, respondents here fail to show any reason that Congress would have considered reassignments after appeal "to go hand in hand" with tardy initial assignments. Since Congress apparently never thought that initial assignments would be late, see *supra*, at 164–167, the better inference is that what we face here is nothing more than a case unprovided for.[12]

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[12] There is, of course, no "'case unprovided for' exception" to the *expressio unius* canon, *post*, at 181 (SCALIA, J., dissenting). It is merely that the canon does not tell us that a case was provided for by negative implication unless an item unmentioned would normally be associated with items listed.

The companies emphasize that § 9704(f)(2)(B) requires that beneficiaries whose operator goes out of business must be treated as unassigned and cannot be reassigned. Even assuming that a provision that goes to the definition of "applicable percentage" and does not directly implicate assignments has the effect the companies suggest, the most that could be said is that Congress wished to identify the first, most responsible operator for a given retiree, and not to follow that with a second assignment to a less responsible operator if the initial assigned operator left the business. This interest does not indicate an object of date-specific finality over accuracy in the first assignment; on the contrary, it opts for finality only once an accurate initial assignment has been made. In the absence of a more exact explanation for this arrangement, we suppose the explanation is good political horse trading. But provisions that by their terms govern after the initial assignment is made tell us nothing about the period in which an initial assignment may be made. In fact, the permissibility under § 9706(f) of postappeal reassignment after October 1, 1993, makes plain that Congress was not "insisting upon as perfect a matchup as possible *up to October 1, 1993*, and then prohibiting future changes, both by way of initial assignment or otherwise," *post*, at 183 (SCALIA, J., dissenting), as JUSTICE SCALIA himself agrees. On the contrary, the reassignment provision indicates that a system of accuracy "in *initial* assignments, whether made *before* the deadline *or afterward*," is precisely what the Act envisions. *Ibid.* Here, as throughout this opinion, "accuracy" refers not to an elusive system of "perfect fairness," *ibid.*, but to assignments by the Commissioner following the scheme set out in §§ 9706(a)(1)–(3).

2

The remaining textual argument for the companies' side rests on the definition of an operator's "applicable percentage" of the overall obligation of all assignee operators (or related persons) to fund benefits for the unassigned. Under § 9704(f)(1), it is defined as the percentage of the operator's own assigned beneficiaries among all assigned beneficiaries "determined on the basis of assignments as of October 1, 1993" (parenthesis omitted). The companies argue that the specification "as of" October 1, 1993, means that an assigned operator's percentage of potential liability for the benefit of the unassigned is fixed according to the assignments made at that date, subject only to specific exceptions set out in § 9704(f)(2), requiring a change in the percentage when erroneously assigned retirees are reassigned or assignee operators go out of business. The companies contend that their position rests on plain meaning: "as of" the date means "as assignments actually stand" on the date. Yet the words "as of," as used in the statute, can be read another way: since Congress required that all possible assignments be complete on October 1, 1993, see § 9706(a), it is equally fair to read assignments "as of" that date to mean "assignments as they shall be on that date, assuming the Commissioner complies with our command." The companies' reading is hospitable to early finality of assignments, while the alternative favors completeness and accuracy before finality prevails.

Once it is seen that there is no "plain" reading, however, there is nothing left of the "as of" argument except its stress that the applicable percentage can be modified only in accordance with the two exceptions recognizing changes for initial error or the demise of an assignee operator. The answer to this point, of course, has already been given. The enunciation of two exceptions does not imply an exclusion of a third unless there is reason to think the third was at least considered, whereas there is good reason to conclude that when Congress adopted the language in question it did not

foresee a failure to make timely assignments. See *supra*, at 168–169. The phrase "as of" cannot be read to govern a situation that Congress clearly did not contemplate,[13] nor does it require the absolute finality of assignments urged by the companies.

IV

This much is certain: the Coal Act rests on Congress's stated finding that it was necessary to "identify persons most responsible for plan liabilities," and on its express desire to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits," Energy Policy Act of 1992, Pub. L. 102–486, § 19142, 106 Stat. 3037.[14] In the words of Senator Wallop's report delivered shortly before enactment, the statute is "designed to allocate the greatest number of beneficiaries in the Plans to a prior

[13] The same may be said of the provision for an initial trustee to serve until November 1, 1993, § 9702(b)(3)(B), contrary to JUSTICE SCALIA's view. *Post*, at 182 (dissenting opinion).

[14] Under the respondent companies' view, if the transfers from the AML Fund prove insufficient to cover the benefits of all unassigned beneficiaries, an operator that received no assignments prior to October 1, 1993, would not have to contribute a penny to the unassigned beneficiary pool—solely due to the Commissioner's fortuitous failure to make all assignments by the statutory deadline. At the same time, operators that received full assignments prior to October 1, 1993, would be forced to cover more than their fair share of unassigned beneficiaries' premiums.

Although JUSTICE SCALIA sees the Act as rife with "seemingly unfair and inequitable provisions," *ibid.* (dissenting opinion), even his view is no reason to assume that Congress meant contested provisions to be construed in the most unfair and inequitable manner possible. In any event, JUSTICE SCALIA's citation of § 9704(f)(2)(B) does not help his position. It provides a clear statutory solution to a problem Congress anticipated: the end of an assigned operator's business. Had Congress propounded a response to the issue now before us as clear as § 9704(f)(2)(B), there would doubtless have been no split in the Courts of Appeals and no cases for us to review. Given the absence of an express provision, the statute's goals are best served by treating operators the way Congress intended them to be treated, that is, by allowing the Commissioner to identify the operators most responsible.

responsible operator. For this reason, definitions are intended by the drafters to be given broad interpretation to accomplish this goal." 138 Cong. Rec. 34001 (1992).[15] To accept the companies' argument that the specified date for action is jurisdictional would be to read the Act so as to allocate not the greatest, but the least, number of beneficiaries to a responsible operator. The way to reach the congressional objective, however, is to read the statutory date as a spur to prompt action, not as a bar to tardy completion of the business of ensuring that benefits are funded, as much as possible, by those identified by Congress as principally responsible.

The judgments of the Court of Appeals in both cases are accordingly

Reversed.

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, dissenting.

The Court's holding today confers upon the Commissioner of Social Security an unexpiring power to assign retired coal miners to signatory operators under 26 U. S. C. § 9706(a). In my view, this disposition is irreconcilable with the text and structure of the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), and finds no support in our precedents. I respectfully dissent.

I

The respondents contend that the Commissioner improperly assigned them responsibility for 600 coal miners under § 9706(a). Section 9706(a) provides, in pertinent part:

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[15] A Congressional Research Service report dated shortly before the enactment likewise states that the Act envisioned that "[w]herever possible, responsibility for individual beneficiaries would be assigned . . . to a previous employer still in business." Coal Industry: Use of Abandoned Mine Reclamation Fund Monies for UMWA "Orphan Retiree" Health Benefits (Sept. 10, 1992), reprinted in 138 Cong. Rec., at 34005.

> "[T]he Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:
>
> "(1) First, to the signatory operator which—
>
> "(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and
>
> "(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.
>
> "(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—
>
> "(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and
>
> "(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.
>
> "(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement."

The Commissioner failed to complete the task of assigning each eligible beneficiary to a signatory operator before October 1, 1993. As a result, many eligible beneficiaries were "unassigned," and their benefits were financed, for a time, by the United Mine Workers of America 1950 Pension Plan (UMWA Pension Plan) and the Abandoned Mine Land Reclamation Fund. See §§ 9705(a)(3)(B), 9705(b)(2).

The Commissioner blames her failure to meet the statutory deadline on the "magnitude of the task" and the lack of appropriated funds. Brief for Petitioners Trustees of the UMWA Combined Benefit Fund 15. It should not be thought, however, that these cases are about letting the

Commissioner complete a little unfinished business that barely missed the deadline. They concern some 600 post-October 1, 1993, assignments to these respondents, the vast majority of which were made between 1995 and 1997, *years* after the statutory deadline had passed. App. 98–121. Respondents contend that these assignments are unlawful, and unless Congress has conferred upon the Commissioner the power that she claims—an *unexpiring* authority to assign eligible beneficiaries to signatory operators—the respondents must prevail. Section 9706(a) does not provide such an expansive power, and the other provisions of the Act confirm this.

II

It is well established that an agency's power to regulate private entities must be grounded in a statutory grant of authority from Congress. See *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 161 (2000); *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 208 (1988); *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U. S. 355, 374 (1986). This principle has special importance with respect to the extraordinary power the Commissioner asserts here: to compel coal companies to pay miners (and their families) health benefits that they never contracted to pay. We have held that the Commissioner's use of this power under § 9706(a), even when exercised before October 1, 1993, violates the Constitution to the extent it imposes severe retroactive liability on certain coal companies. See *Eastern Enterprises* v. *Apfel*, 524 U. S. 498 (1998). When an agency exercises a power that so tests constitutional limits, we have all the more obligation to assure that it is rooted in the text of a statute.

The Court holds that the Commissioner retains the power to act after October 1, 1993, because Congress did not "'specify a consequence for noncompliance'" with the statutory deadline. *Ante*, at 159. This makes no sense. When a power is conferred for a limited time, the *automatic* consequence of the expiration of that time is the expiration of the

power. If a landowner authorizes someone to cut Christmas trees "before December 15," there is no doubt what happens when December 15 passes: The authority to cut terminates. And the situation is not changed when the authorization is combined with a mandate—as when the landowner enters a contract which says that the other party "shall cut all Christmas trees on the property before December 15." Even if time were not of the essence of that contract (as it *is* of the essence of § 9706(a), for reasons I shall discuss in Part III, *infra*) no one would think that the contractor had continuing authority—not just for a few more days or weeks—but perpetually, to harvest trees.[1]

The Court points out, *ante*, at 161–162, that three other provisions of the Coal Act combine the word "shall" with a statutory deadline that in its view *is* extendible:

> (1) Section 9705(a)(1)(A) states that the UMWA Pension Plan "shall transfer to the Combined Fund . . . $70,000,000 on February 1, 1993";
>
> (2) § 9704(h) says the trustees for the Combined Fund "shall, not later than 60 days" after the enactment date,

[1] This interpretation of § 9706(a) does not "assum[e] away the very question to be decided," as the Court accuses, *ante*, at 159, n. 6. It is no assumption at all, but rather the consequence of the proposition that the scope of an agency's power is determined by the text of the statutory grant of authority. Because § 9706(a)'s power to "assign . . . eligible beneficiar[ies]" is *prefaced by* the phrase "before October 1, 1993," the statutory date is intertwined with the grant of authority; it is part of the very definition of the Commissioner's power. If the statute provided that the Commissioner "shall, on or after October 1, 1993," assign each eligible beneficiary to a signatory operator, it would surely be beyond dispute that pre-October 1, 1993, assignments were ineffective. No different conclusion should obtain here, where the temporal scope of the Commissioner's authority is likewise defined according to a clear and unambiguous date. If this is (as the Court charges) "formalism," *ibid.*, it is only because language *is* a matter of form. Here the form that Congress chose presumptively represents the political compromise that Congress arrived at.

furnish certain information regarding benefits to the Commissioner; and

(3) § 9702(a)(1) provides that certain individuals described in § 9702(b)(1) "shall designate" the trustees for the Combined Fund "not later than 60 days . . . after the enactment date."

I agree that the actions mandated by the first two of these deadlines can be taken after the deadlines have expired (though perhaps not *forever* after, which is what the Court claims for the deadline of § 9706(a)). The reason that is so, however, does not at all apply to § 9706(a). In those provisions, *the power to do what is mandated does not stem from the mere implication of the mandate itself.* The private entities involved have the power to do what is prescribed, quite apart from the statutory command that they do it by a certain date: The UMWA Pension Plan has the power to transfer funds,[2] and the trustees of the Combined Fund have the power to provide the specified information, whether the statute commands that they do so or not. The only question

[2] Private entities, unlike administrative agencies, do not need authorization from Congress in order to act—they have the power to take all action within the scope of their charter, unless and until the law forbids it. The Court suggests that the Employee Retirement Income Security Act of 1974 (ERISA) may actually forbid the UMWA Pension Plan from transferring its pension surplus to the benefit fund. *Ante*, at 162–163, n. 8. But if this is true, that does not convert § 9705(a)(1) into a power-conferring statutory provision in the mold of § 9706(a). It instead means that the UMWA Pension Plan is subject to contradictory statutory mandates, and the relevant question becomes whether, and to what extent, § 9705(a)(1) implicitly repealed the provisions of ERISA as applied to the UMWA Pension Plan. Resolving that question would be no small task, given our disinclination to find implied repeals, see *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974), and I will not speculate on it. Instead, I am content to go along with the Court's assumption that nothing in § 9705(a)(1), or in the rest of the Coal Act, prevents the UMWA Pension Plan from transferring money to the Combined Fund after the statutory deadline, and to emphasize that nothing in this concession lends support to the Court's interpretation of § 9706(a).

is whether the *late* exercise of an unquestionably authorized act will produce the consequences that the statute says will follow from a *timely* exercise of that act. It is as though, to pursue the tree-harvesting analogy, a contract provided that the *landowner* will harvest and deliver trees by December 15; even after December 15 passes, he can surely harvest and deliver trees, and the only issue is whether the December 15 date is so central to the contract that late delivery does not have the contractual consequence of requiring the other side's counterperformance. The Commissioner of Social Security, by contrast, being not a private entity but a creature of Congress, has *no authority* to assign beneficiaries to operators except insofar as such authority is implicit in the mandate; but the mandate (and hence the implicit authority) expired on October 1, 1993.

The last of these three provisions *does* confer a power that is not otherwise available to the private entities involved: the power to appoint initial trustees to the board of the Combined Fund. I do not, however, think it as clear as the Court does—indeed, I think it quite debatable—whether that power survives the deadline. If it be thought utterly essential that all the trustees be in place, it seems to me just as reasonable to interpret the provision for appointment of successor trustees (§ 9702(b)(2)) to include the power to fill vacancies arising from initial failure to appoint, as to interpret the initial appointment power to extend beyond its specified termination date. The provision surely does not establish the Court's proposition that time-limited mandates include continuing authority.

III

None of the cases on which the Court relies is even remotely in point. In *Brock* v. *Pierce County*, 476 U. S. 253 (1986), the agency action in question was authorized by an explicit statutory grant of authority, separate and apart from the provision that contained the time-limited mandate.

Title 29 U. S. C. § 816(d)(1) (1976 ed., Supp. V) (now repealed) gave the Secretary of Labor "authority to . . . order such sanctions or corrective actions as are appropriate." *Another* provision of the statute, former § 816(b), required the Secretary, when investigating a complaint that a recipient is misusing funds, to "make the final determination . . . regarding the truth of the allegation . . . not later than 120 days after receiving the complaint." We held that the Secretary's failure to meet the 120-day deadline did not prevent him from ordering repayment of misspent funds. Respondent had not, we said, shown anything that caused the Secretary to "*lose* its power to act," 476 U. S., at 260 (emphasis added). Here, by contrast, the Commissioner *never had* power to act apart from the mandate, which expired after October 1, 1993.

In *United States* v. *James Daniel Good Real Property*, 510 U. S. 43 (1993), federal statutes authorized the Government to bring a forfeiture action within a 5-year limitation period. 21 U. S. C. § 881(a)(7); 19 U. S. C. § 1621. We held that that power was not revoked by the Government's failure to comply with some of the separate "internal timing requirements" set forth in §§ 1602–1604. Because those provisions failed to specify a consequence for noncompliance, we refused to "impose [our] own coercive sanction" of terminating the Government's authority to bring a forfeiture action. *James Daniel Good*, *supra*, at 63. The authorization *separate from the defaulted obligation* was not affected. There is no authorization separate from the defaulted obligation here.

In *United States* v. *Montalvo-Murillo*, 495 U. S. 711 (1990), the statute at issue, 18 U. S. C. § 3142(e), gave courts power to order pretrial detention "after a hearing pursuant to the provisions of subsection (f) of this section." One of those provisions was that the hearing "shall be held immediately upon the person's first appearance before the judicial officer . . . ." § 3142(f). The court had failed to hold a hearing immediately upon the respondent's first appearance, yet

we held that the authority to order pretrial detention was unaffected. As we explained: "It is conceivable that some combination of procedural irregularities *could* render a detention hearing so flawed that it would *not* constitute 'a hearing pursuant to the provisions of subsection (f)' for purposes of § 3142(e)," 495 U. S., at 717 (emphasis added), but the mere failure to comply with the first-appearance requirement did not alone have that effect. Once again, the case holds that an authorization *separate from the defaulted obligation* is not affected; and there is no authorization separate from the defaulted obligation here.

The contrast between these cases and the present ones demonstrates why the Court's extended discussion of whether Congress specified consequences for the Commissioner's failure to comply with the October 1 deadline, *ante*, at 163–164, is quite beside the point. A specification of termination of authority may be needed where there is a separate authorization to be canceled; it is utterly superfluous where the only authorization is contained in the time-limited mandate that has expired.

IV

That the Commissioner lacks authority to assign eligible beneficiaries after the statutory deadline is confirmed by other provisions of the Coal Act that are otherwise rendered incoherent.

A

The calculation of "death benefit premiums" and "unassigned beneficiaries premiums" owed by coal operators is based on an assigned operator's "applicable percentage," which is defined in § 9704(f) as "the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators *(determined on the basis of assignments as of October 1, 1993)*." (Emphasis added.) The statute specifies

only two circumstances in which adjustments may be made to an assigned operator's "applicable percentage": (1) when changes to the assignments "as of October 1, 1993," result from the appeals process set out in § 9706(f), see § 9704(f)(2)(A); and (2) when an assigned operator goes out of business, see § 9704(f)(2)(B). *No* provision allows adjustments to account for post-October 1, 1993, initial assignments. This is perfectly consistent with the view that the § 9706(a) power to assign does not extend beyond October 1, 1993; it is incompatible with the Court's holding to the contrary.

The Court's response to this structural dilemma is nothing short of astonishing. The Court concludes that the applicable percentage based on assignments as of October 1, 1993, *may* be adjusted to account for the subsequent initial assignments, notwithstanding the statutory *command* that the applicable percentage be determined "on the basis of assignments as of October 1, 1993," and notwithstanding the statute's provision of two, and only two, exceptions to this command that do not include post-October 1, 1993, initial assignments. "The enunciation of two exceptions," the Court says, "does not imply an exclusion of a third unless there is reason to think the third was at least considered." *Ante,* at 170. Here, "[s]ince Congress apparently never thought that initial assignments would be late, . . . the better inference is that what we face . . . is nothing more than a case unprovided for." *Ante,* at 169 (referred to *ante,* at 170–171). This is an unheard-of limitation upon the accepted principle of construction *inclusio unius, exclusio alterius.* See, *e. g.*, *O'Melveny & Myers* v. *FDIC,* 512 U. S. 79, 86 (1994); *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U. S. 163, 168 (1993). It is also an absurd limitation, since it means that the more *unimaginable* an unlisted item is, the more *likely* it is *not* to be excluded. Does this new maxim mean, for example, that exceptions to the hearsay rule beyond those set forth in the Federal Rules

of Evidence must be recognized if it is unlikely that Congress (or perhaps the Rules committee) "considered" those unnamed exceptions? Our cases do not support such a proposition. See, *e. g.*, *Williamson* v. *United States*, 512 U. S. 594 (1994); *United States* v. *Salerno*, 505 U. S. 317 (1992).[3] There is no more reason to make a "case unprovided for" exception to the clear import of an exclusive listing than there is to make such an exception to any other clear textual disposition. In a way, therefore, the Court's treatment of this issue has *ample* precedent—in those many wrongly decided cases that replace what the legislature said with what courts think the legislature *would have said (i. e.*, in the judges' estimation *should have said)* if it had only "considered" unanticipated consequences of what it *did* say (of which the courts disapprove). In any event, the relevant question here is not whether § 9704(f)(2) *excludes* other grounds for adjustments to the applicable percentage, but rather whether anything in the statute affirmatively *authorizes* them. The answer to that question is no—an answer that should not surprise the Court, given its acknowledgment that Congress "did not foresee a failure to make timely assignments." *Ante*, at 170–171.

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[3] The most enduring consequence of today's opinion may well be its gutting of the ancient canon of construction. It speaks volumes about the dearth of precedent for the Court's position that the principal case it relies upon, *ante*, at 168–169, is *Chevron U. S. A. Inc.* v. *Echazabal*, 536 U. S. 73 (2002). The express language of the statute interpreted in that case demonstrated that the single enumerated example of a "qualification standard" was illustrative rather than exhaustive: "The term 'qualification standards' *may include* a requirement that an individual shall not pose any direct threat to the health or safety of other individuals in the workplace." 42 U. S. C. § 12113(b) (emphasis added). Little wonder that the Court did not find in that text "an omission [that] bespeaks a negative implication," 536 U. S., at 81. And of course the opinion said nothing about the requirement (central to the Court's analysis today) that it be "fair to suppose that Congress considered the unnamed possibility," *ante*, at 168.

B

Post-October 1, 1993, initial assignments can also not be reconciled with the Coal Act's provisions regarding appointments to the board of trustees. Section 9702(b)(1)(B) establishes for the Combined Fund a board of seven members, one of whom is to be "designated by the three employers . . . who have been assigned the greatest number of eligible beneficiaries under section 9706." The Act provides for an "initial trustee" to fill this position pending completion of the assignment process, but § 9702(b)(3)(B) permits this initial trustee to serve only "until November 1, 1993." It is evident, therefore, that the "three employers . . . who have been assigned the greatest number of eligible beneficiaries under section 9706" *must* be known by November 1, 1993. It is simply inconceivable that the three appointing employers were to be unknown (and the post left unfilled) until the Commissioner completes an open-ended assignment process—whenever that might be; or that the designated trustee is constantly to change, as the identity of the "three employers . . . who have been assigned the greatest number of eligible beneficiaries under section 9706" constantly changes.

V

At bottom, the Court's reading of the Coal Act—its confident filling in of provisions to cover "cases not provided for"—rests upon its perception that the statute's overriding goal is accuracy in assignments. That is a foundation of sand. The Coal Act is demonstrably *not* a scheme that requires, or even attempts to require, a perfect match between each beneficiary and the coal operator most responsible for that beneficiary's health care. It provides, at best, rough justice; seemingly unfair and inequitable provisions abound.

When, for example, an operator goes out of business, § 9704(f)(2)(B) provides that beneficiaries previously assigned to that operator must go into the unassigned pool for purposes of calculating the "applicable percentage." It

makes no provision for them to be reassigned to another operator, *even if* another operator might qualify under §§ 9706(a)(1)–(3). That is hardly compatible with a scheme that is keen on "accuracy of assignments," and that envisions perpetual assignment authority in the Commissioner.

To account for the existence of § 9704(f)(2)(B), the Court retreats to the more nuanced position that the Coal Act prefers accuracy over finality only "in the first assignment," *ante*, at 169, n. 12. Why it should have this strange preference for perfection in virgin assignments is a mystery. One might understand insisting upon as perfect a matchup as possible *up to October 1, 1993*, and then prohibiting future changes, both by way of initial assignment or otherwise; that would assure an initial system that is as near perfect as possible, but abstain from future adjustments that upset expectations and render sales of companies more difficult. But what is the conceivable reason for insistence upon perfection in *initial* assignments, whether made *before* the deadline *or afterward?*[4] As it is, however, the Act does *not* insist upon accuracy in initial assignments, not even in those made *before* the deadline. For each assigned beneficiary, only one signatory operator is held responsible for health benefits, *even if* that miner had worked for other signatory operators that should in perfect fairness share the responsibility.

The reality is that the Coal Act reflects a *compromise* between the goals of perfection in assignments and finality. It provides *some* accuracy in initial assignments along with

[4] The Court points to § 9706(f)'s review process in support of its view that the Coal Act envisions "accuracy 'in inital assignments, whether made before the deadline or afterward.'" *Ante*, at 169, n. 12 (emphasis deleted). In fact it shows the opposite—reflecting the statute's *tradeoffs* between the competing objectives of accuracy in assignments and finality. Sections 9706(f)(1) and (f)(2) provide time limits for coal operators to request reconsideration by the Commissioner; errors discovered after these time limits have passed are forever closed from correction. (Unless, of course, the Court chooses, in the interest of accuracy in assignments, to ignore those time limits, just as it has ignored the time limit of § 9706(a).)

some repose to signatory operators, who are given full notice of their obligations by October 1, 1993, and can plan their business accordingly without the surprise of new (and retroactive) liabilities imposed by the Commissioner. It is naive for the Court to rely on guesses as to what Congress would have wanted in legislation as complicated as this, the culmination of a long, drawn-out legislative battle in which, as we put it in *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 461 (2002), "highly interested parties attempt[ed] to pull the provisions in different directions." The best way to be faithful to the resulting compromise is to follow the statute's text, as I have done above—not to impute to Congress one statutory objective favored by the majority of this Court at the expense of other, equally plausible, statutory objectives.

* * *

I think it clear from the text of § 9706(a) and other provisions of the Coal Act that the Commissioner lacks authority to assign eligible beneficiaries to signatory operators on or after October 1, 1993. I respectfully dissent from the Court's judgment to the contrary.

JUSTICE THOMAS, dissenting.

I fully agree with JUSTICE SCALIA's analysis in these cases and, accordingly, join his opinion. I write separately, however, to reiterate a seemingly obvious rule: Unless Congress explicitly states otherwise, "we construe a statutory term in accordance with its ordinary or natural meaning." *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994). Thus, absent a congressional directive to the contrary, "shall" must be construed as a mandatory command, see American Heritage Dictionary 1598 (4th ed. 2000) (defining "shall" as (1)a. "Something that will take place or exist in the future . . . . b. Something, such as an order, promise, requirement, or obligation: *You shall leave now. He shall answer for his misdeeds. The penalty shall not exceed two years in prison*"). If Congress desires

for this Court to give "shall" a nonmandatory meaning, it must say so explicitly by specifying the consequences for noncompliance or explicitly defining the term "shall" to mean something other than a mandatory directive. Indeed, Congress is perfectly free to signify the hortatory nature of its wishes by choosing among a wide array of words that do, in fact, carry such meaning; "should," "preferably," and "if possible" readily come to mind.

Given the foregoing, I disagree with *Brock* v. *Pierce County*, 476 U. S. 253 (1986), and its progeny, to the extent they are taken, perhaps erroneously, see *ante*, at 177–179 (SCALIA, J., dissenting), to suggest that (1) "shall" is not mandatory and that (2) a failure to specify a consequence for noncompliance preserves the power to act in the face of such noncompliance, even where, as here, the grant of authority to act is coterminous with the mandatory command. I fail to see any reason for eviscerating the clear meaning of "shall," other than the impermissible goal of saving Congress from its own choices in the name of achieving better policy. But Article III does not vest judges with the authority to rectify those congressional decisions that we view as imprudent.

I also note that, under the Court's current interpretive approach, there is *no penalty at all* for failing to comply with a duty if Congress does not specify consequences for noncompliance. The result is most irrational: If Congress indicates a *lesser* penalty for noncompliance (*i. e.*, less than a loss of power to act), we will administer it; but if there is no lesser penalty and "shall" stands on its own, we will let government officials shirk their duty with impunity.

Rather than depriving the term "shall" of its ordinary meaning, I would apply the term as a mandatory directive to the Commissioner. The conclusion then is obvious: The Commissioner has no power to make initial assignments after October 1, 1993.

Syllabus

ELDRED ET AL. *v.* ASHCROFT, ATTORNEY GENERAL

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

No. 01–618. Argued October 9, 2002—Decided January 15, 2003

The Copyright and Patent Clause, U. S. Const., Art. I, § 8, cl. 8, provides as to copyrights: "Congress shall have Power . . . [t]o promote the Progress of Science . . . by securing [to Authors] for limited Times . . . the exclusive Right to their . . . Writings." In the 1998 Copyright Term Extension Act (CTEA), Congress enlarged the duration of copyrights by 20 years: Under the 1976 Copyright Act (1976 Act), copyright protection generally lasted from a work's creation until 50 years after the author's death; under the CTEA, most copyrights now run from creation until 70 years after the author's death, 17 U. S. C. § 302(a). As in the case of prior copyright extensions, principally in 1831, 1909, and 1976, Congress provided for application of the enlarged terms to existing and future copyrights alike.

Petitioners, whose products or services build on copyrighted works that have gone into the public domain, brought this suit seeking a determination that the CTEA fails constitutional review under both the Copyright Clause's "limited Times" prescription and the First Amendment's free speech guarantee. Petitioners do not challenge the CTEA's "life-plus-70-years" timespan itself. They maintain that Congress went awry not with respect to newly created works, but in enlarging the term for published works with existing copyrights. The "limited Tim[e]" in effect when a copyright is secured, petitioners urge, becomes the constitutional boundary, a clear line beyond the power of Congress to extend. As to the First Amendment, petitioners contend that the CTEA is a content-neutral regulation of speech that fails inspection under the heightened judicial scrutiny appropriate for such regulations. The District Court entered judgment on the pleadings for the Attorney General (respondent here), holding that the CTEA does not violate the Copyright Clause's "limited Times" restriction because the CTEA's terms, though longer than the 1976 Act's terms, are still limited, not perpetual, and therefore fit within Congress' discretion. The court also held that there are no First Amendment rights to use the copyrighted works of others. The District of Columbia Circuit affirmed. In that court's unanimous view, *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, foreclosed petitioners' First Amendment challenge to the CTEA. The appeals court reasoned that copyright does not impermis-

sibly restrict free speech, for it grants the author an exclusive right only to the specific form of expression; it does not shield any idea or fact contained in the copyrighted work, and it allows for "fair use" even of the expression itself. A majority of the court also rejected petitioners' Copyright Clause claim. The court ruled that Circuit precedent precluded petitioners' plea for interpretation of the "limited Times" prescription with a view to the Clause's preambular statement of purpose: "To promote the Progress of Science." The court found nothing in the constitutional text or history to suggest that a term of years for a copyright is not a "limited Tim[e]" if it may later be extended for another "limited Tim[e]." Recounting that the First Congress made the 1790 Copyright Act applicable to existing copyrights arising under state copyright laws, the court held that that construction by contemporaries of the Constitution's formation merited almost conclusive weight under *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U. S. 53, 57. As early as *McClurg* v. *Kingsland*, 1 How. 202, the Court of Appeals recognized, this Court made it plain that the Copyright Clause permits Congress to amplify an existing patent's terms. The court added that this Court has been similarly deferential to Congress' judgment regarding copyright. *E. g.*, *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417. Concerning petitioners' assertion that Congress could evade the limitation on its authority by stringing together an unlimited number of "limited Times," the court stated that such legislative misbehavior clearly was not before it. Rather, the court emphasized, the CTEA matched the baseline term for United States copyrights with the European Union term in order to meet contemporary circumstances.

Held: In placing existing and future copyrights in parity in the CTEA, Congress acted within its authority and did not transgress constitutional limitations. Pp. 199–222.

1. The CTEA's extension of existing copyrights does not exceed Congress' power under the Copyright Clause. Pp. 199–218.

(a) Guided by text, history, and precedent, this Court cannot agree with petitioners that extending the duration of existing copyrights is categorically beyond Congress' Copyright Clause authority. Although conceding that the CTEA's baseline term of life plus 70 years qualifies as a "limited Tim[e]" as applied to future copyrights, petitioners contend that existing copyrights extended to endure for that same term are not "limited." In petitioners' view, a time prescription, once set, becomes forever "fixed" or "inalterable." The word "limited," however, does not convey a meaning so constricted. At the time of the Framing, "limited" meant what it means today: confined within certain bounds, restrained, or circumscribed. Thus understood, a timespan appropriately "limited"

as applied to future copyrights does not automatically cease to be "limited" when applied to existing copyrights. To comprehend the scope of Congress' Copyright Clause power, "a page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349. History reveals an unbroken congressional practice of granting to authors of works with existing copyrights the benefit of term extensions so that all under copyright protection will be governed evenhandedly under the same regime. Moreover, because the Clause empowering Congress to confer copyrights also authorizes patents, the Court's inquiry is significantly informed by the fact that early Congresses extended the duration of numerous individual patents as well as copyrights. Lower courts saw no "limited Times" impediment to such extensions. Further, although this Court never before has had occasion to decide whether extending existing copyrights complies with the "limited Times" prescription, the Court has found no constitutional barrier to the legislative expansion of existing patents. See, *e. g., McClurg,* 1 How., at 206. Congress' consistent historical practice reflects a judgment that an author who sold his work a week before should not be placed in a worse situation than the author who sold his work the day after enactment of a copyright extension. The CTEA follows this historical practice by keeping the 1976 Act's duration provisions largely in place and simply adding 20 years to each of them.

The CTEA is a rational exercise of the legislative authority conferred by the Copyright Clause. On this point, the Court defers substantially to Congress. *Sony,* 464 U. S., at 429. The CTEA reflects judgments of a kind Congress typically makes, judgments the Court cannot dismiss as outside the Legislature's domain. A key factor in the CTEA's passage was a 1993 European Union (EU) directive instructing EU members to establish a baseline copyright term of life plus 70 years and to deny this longer term to the works of any non-EU country whose laws did not secure the same extended term. By extending the baseline United States copyright term, Congress sought to ensure that American authors would receive the same copyright protection in Europe as their European counterparts. The CTEA may also provide greater incentive for American and other authors to create and disseminate their work in the United States. Additionally, Congress passed the CTEA in light of demographic, economic, and technological changes, and rationally credited projections that longer terms would encourage copyright holders to invest in the restoration and public distribution of their works. Pp. 199–208.

(b) Petitioners' Copyright Clause arguments, which rely on several novel readings of the Clause, are unpersuasive. Pp. 208–218.

Syllabus

(1) Nothing before this Court warrants construction of the CTEA's 20-year term extension as a congressional attempt to evade or override the "limited Times" constraint. Critically, petitioners fail to show how the CTEA crosses a constitutionally significant threshold with respect to "limited Times" that the 1831, 1909, and 1976 Acts did not. Those earlier Acts did not create perpetual copyrights, and neither does the CTEA. Pp. 208–210.

(2) Petitioners' dominant series of arguments, premised on the proposition that Congress may not extend an existing copyright absent new consideration from the author, are unavailing. The first such contention, that the CTEA's extension of existing copyrights overlooks the requirement of "originality," incorrectly relies on *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 345, 359. That case did not touch on the duration of copyright protection. Rather, it addressed only the core question of copyrightability. Explaining the originality requirement, *Feist* trained on the Copyright Clause words "Authors" and "Writings," *id.*, at 346–347, and did not construe the "limited Times" prescription, as to which the originality requirement has no bearing. Also unavailing is petitioners' second argument, that the CTEA's extension of existing copyrights fails to "promote the Progress of Science" because it does not stimulate the creation of new works, but merely adds value to works already created. The justifications that motivated Congress to enact the CTEA, set forth *supra*, provide a rational basis for concluding that the CTEA "promote[s] the Progress of Science." Moreover, Congress' unbroken practice since the founding generation of applying new definitions or adjustments of the copyright term to both future works and existing works overwhelms petitioners' argument. Also rejected is petitioners' third contention, that the CTEA's extension of existing copyrights without demanding additional consideration ignores copyright's *quid pro quo*, whereby Congress grants the author of an original work an "exclusive Right" for a "limited Tim[e]" in exchange for a dedication to the public thereafter. Given Congress' consistent placement of existing copyright holders in parity with future holders, the author of a work created in the last 170 years would reasonably comprehend, as the protection offered her, a copyright not only for the time in place when protection is gained, but also for any renewal or extension legislated during that time. *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U. S. 225, 229, and *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 146, both of which involved the federal patent regime, are not to the contrary, since neither concerned the extension of a patent's duration nor suggested that such an extension

might be constitutionally infirm. Furthermore, given crucial distinctions between patents and copyrights, one cannot extract from language in the Court's patent decisions—language not trained on a grant's duration—genuine support for petitioners' *quid pro quo* argument. Patents and copyrights do not entail the same exchange, since immediate disclosure is not the objective of, but is *exacted from*, the patentee, whereas disclosure is the desired objective of the author seeking copyright protection. Moreover, while copyright gives the holder no monopoly on any knowledge, fact, or idea, the grant of a patent prevents full use by others of the inventor's knowledge. Pp. 210–217.

(3) The "congruence and proportionality" standard of review described in cases evaluating exercises of Congress' power under § 5 of the Fourteenth Amendment has never been applied outside the § 5 context. It does not hold sway for judicial review of legislation enacted, as copyright laws are, pursuant to Article I authorization. Section 5 authorizes Congress to "enforce" commands contained in and incorporated into the Fourteenth Amendment. The Copyright Clause, in contrast, empowers Congress to *define* the scope of the substantive right. See *Sony*, 464 U. S., at 429. Judicial deference to such congressional definition is "but a corollary to the grant to Congress of any Article I power." *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1, 6. It would be no more appropriate for this Court to subject the CTEA to "congruence and proportionality" review than it would be to hold the Act unconstitutional *per se*. Pp. 217–218.

2. The CTEA's extension of existing and future copyrights does not violate the First Amendment. That Amendment and the Copyright Clause were adopted close in time. This proximity indicates the Framers' view that copyright's limited monopolies are compatible with free speech principles. In addition, copyright law contains built-in First Amendment accommodations. See *Harper & Row*, 471 U. S., at 560. First, 17 U. S. C. § 102(b), which makes only expression, not ideas, eligible for copyright protection, strikes a definitional balance between the First Amendment and copyright law by permitting free communication of facts while still protecting an author's expression. *Harper & Row*, 471 U. S., at 556. Second, the "fair use" defense codified at § 107 allows the public to use not only facts and ideas contained in a copyrighted work, but also expression itself for limited purposes. "Fair use" thereby affords considerable latitude for scholarship and comment, *id.*, at 560, and even for parody, see *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569. The CTEA itself supplements these traditional First Amendment safeguards in two prescriptions: The first allows libraries and similar institutions to reproduce and distribute copies of certain published works for scholarly purposes during the last 20 years of any copyright

term, if the work is not already being exploited commercially and further copies are unavailable at a reasonable price, § 108(h); the second exempts small businesses from having to pay performance royalties on music played from licensed radio, television, and similar facilities, § 110(5)(B). Finally, petitioners' reliance on *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 641, is misplaced. *Turner Broadcasting* involved a statute requiring cable television operators to carry and transmit broadcast stations through their proprietary cable systems. The CTEA, in contrast, does not oblige anyone to reproduce another's speech against the carrier's will. Instead, it protects authors' original expression from unrestricted exploitation. The First Amendment securely protects the freedom to make—or decline to make—one's own speech; it bears less heavily when speakers assert the right to make other people's speeches. When, as in this case, Congress has not altered the traditional contours of copyright protection, further First Amendment scrutiny is unnecessary. See, *e. g.*, *Harper & Row*, 471 U. S., at 560. Pp. 218–222.

239 F. 3d 372, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., *post*, p. 222, and BREYER, J., *post*, p. 242, filed dissenting opinions.

Lawrence Lessig argued the cause for petitioners. With him on the briefs were *Kathleen M. Sullivan*, *Alan B. Morrison*, *Edward Lee*, *Charles Fried*, *Geoffrey S. Stewart*, *Donald B. Ayer*, *Robert P. Ducatman*, *Daniel H. Bromberg*, *Charles R. Nesson*, and *Jonathan L. Zittrain.*

Solicitor General Olson argued the cause for respondent. With him on the brief were *Assistant Attorney General McCallum*, *Deputy Solicitor General Wallace*, *Jeffrey A. Lamken*, *William Kanter*, and *John S. Koppel.**

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*Briefs of *amici curiae* urging reversal were filed for the American Association of Law Libraries et al. by *Arnold P. Lutzker* and *Carl H. Settlemyer III;* for the College Art Association et al. by *Jeffrey P. Cunard* and *Bruce P. Keller;* for the Eagle Forum Education & Legal Defense Fund et al. by *Karen Tripp* and *Phyllis Schlafly;* for the Free Software Foundation by *Eben Moglen;* for Intellectual Property Law Professors by *Jonathan Weinberg;* for the Internet Archive et al. by *Deirdre K. Mulli-*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority the Constitution assigns to Congress to prescribe the duration of copyrights. The Copyright and Patent Clause of the Constitution, Art. I, § 8, cl. 8, provides as to copyrights: "Congress shall have

gan, *Mark A. Lemley*, and *Steven M. Harris;* and for Jack M. Balkin et al. by *Burt Neuborne*.

Briefs of *amici curiae* urging affirmance were filed for the American Intellectual Property Law Association by *Baila H. Celedonia*, *Mark E. Haddad*, and *Roger W. Parkhurst;* for the American Society of Composers, Authors and Publishers et al. by *Carey R. Ramos*, *Peter L. Felcher*, *Drew S. Days III*, *Beth S. Brinkmann*, and *Paul Goldstein;* for Amsong, Inc., by *Dorothy M. Weber;* for AOL Time Warner, Inc., by *Kenneth W. Starr*, *Richard A. Cordray*, *Daryl Joseffer*, *Paul T. Cappuccio*, *Edward J. Weiss*, and *Shira Perlmutter;* for the Association of American Publishers et al. by *Charles S. Sims* and *Jon A. Baumgarten;* for the Bureau of National Affairs, Inc., et al. by *Paul Bender* and *Michael R. Klipper;* for the Directors Guild of America et al. by *George H. Cohen*, *Leon Dayan*, and *Laurence Gold;* for Dr. Seuss Enterprises, L. P., et al. by *Karl ZoBell*, *Nancy O. Dix*, *Cathy Ann Bencivengo*, *Randall E. Kay*, and *Herbert B. Cheyette;* for the Intellectual Property Owners Association by *Charles D. Ossola* and *Ronald E. Myrick;* for the International Coalition for Copyright Protection by *Eric Lieberman;* for the Motion Picture Association of America, Inc., by *Seth P. Waxman*, *Randolph D. Moss*, *Edward C. DuMont*, *Neil M. Richards*, and *Simon Barsky;* for the Recording Artists Coalition by *Thomas G. Corcoran, Jr.;* for the Recording Industry Association of America by *Donald B. Verrilli, Jr.*, *Thomas J. Perrelli*, *William M. Hohengarten*, *Matthew J. Oppenheim*, and *Stanley Pierre-Louis;* for the Songwriters Guild of America by *Floyd Abrams* and *Joel Kurtzberg;* for Jack Beeson et al. by *I. Fred Koenigsberg* and *Gaela K. Gehring Flores;* for Senator Orrin G. Hatch by *Thomas R. Lee;* for *Edward Samuels*, *pro se;* and for Representative F. James Sensenbrenner, Jr., et al. by *Arthur B. Culvahouse, Jr.*, and *Robert M. Schwartz*.

Briefs of *amici curiae* were filed for Hal Roach Studios et al. by *H. Jefferson Powell* and *David Lange;* for Intel Corp. by *James M. Burger;* for the Nashville Songwriters Association International by *Stephen K. Rush;* for the New York Intellectual Property Law Association by *Bruce M. Wexler* and *Peter Saxon;* for the National Writers Union et al. by *Peter Jaszi;* for the Progressive Intellectual Property Law Association et al. by *Michael H. Davis;* for George A. Akerlof et al. by *Roy T. Englert, Jr.;* for Tyler T. Ochoa et al. by *Mr. Ochoa;* and for *Malla Pollack*, *pro se*.

Power . . . [t]o promote the Progress of Science . . . by securing [to Authors] for limited Times . . . the exclusive Right to their . . . Writings." In 1998, in the measure here under inspection, Congress enlarged the duration of copyrights by 20 years. Copyright Term Extension Act (CTEA), Pub. L. 105–298, §§ 102(b) and (d), 112 Stat. 2827–2828 (amending 17 U. S. C. §§ 302, 304). As in the case of prior extensions, principally in 1831, 1909, and 1976, Congress provided for application of the enlarged terms to existing and future copyrights alike.

Petitioners are individuals and businesses whose products or services build on copyrighted works that have gone into the public domain. They seek a determination that the CTEA fails constitutional review under both the Copyright Clause's "limited Times" prescription and the First Amendment's free speech guarantee. Under the 1976 Copyright Act, copyright protection generally lasted from the work's creation until 50 years after the author's death. Pub. L. 94–553, § 302(a), 90 Stat. 2572 (1976 Act). Under the CTEA, most copyrights now run from creation until 70 years after the author's death. 17 U. S. C. § 302(a). Petitioners do not challenge the "life-plus-70-years" timespan itself. "Whether 50 years is enough, or 70 years too much," they acknowledge, "is not a judgment meet for this Court." Brief for Petitioners 14.[1] Congress went awry, petitioners maintain, not with respect to newly created works, but in enlarging the term for published works with existing copyrights. The "limited Tim[e]" in effect when a copyright is secured, petitioners urge, becomes the constitutional boundary, a clear line beyond the power of Congress to extend. See *ibid.* As to the First Amendment, petitioners contend that the CTEA is a content-neutral regulation of speech that fails inspection

[1] JUSTICE BREYER's dissent is not similarly restrained. He makes no effort meaningfully to distinguish existing copyrights from future grants. See, *e. g.*, *post*, at 242–243, 254–260, 264–266. Under his reasoning, the CTEA's 20-year extension is globally unconstitutional.

under the heightened judicial scrutiny appropriate for such regulations.

In accord with the District Court and the Court of Appeals, we reject petitioners' challenges to the CTEA. In that 1998 legislation, as in all previous copyright term extensions, Congress placed existing and future copyrights in parity. In prescribing that alignment, we hold, Congress acted within its authority and did not transgress constitutional limitations.

I

A

We evaluate petitioners' challenge to the constitutionality of the CTEA against the backdrop of Congress' previous exercises of its authority under the Copyright Clause. The Nation's first copyright statute, enacted in 1790, provided a federal copyright term of 14 years from the date of publication, renewable for an additional 14 years if the author survived the first term. Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124 (1790 Act). The 1790 Act's renewable 14-year term applied to existing works (*i. e.*, works already published and works created but not yet published) and future works alike. *Ibid.* Congress expanded the federal copyright term to 42 years in 1831 (28 years from publication, renewable for an additional 14 years), and to 56 years in 1909 (28 years from publication, renewable for an additional 28 years). Act of Feb. 3, 1831, ch. 16, §§ 1, 16, 4 Stat. 436, 439 (1831 Act); Act of Mar. 4, 1909, ch. 320, §§ 23–24, 35 Stat. 1080–1081 (1909 Act). Both times, Congress applied the new copyright term to existing and future works, 1831 Act §§ 1, 16; 1909 Act §§ 23–24; to qualify for the 1831 extension, an existing work had to be in its initial copyright term at the time the Act became effective, 1831 Act §§ 1, 16.

In 1976, Congress altered the method for computing federal copyright terms. 1976 Act §§ 302–304. For works cre-

ated by identified natural persons, the 1976 Act provided that federal copyright protection would run from the work's creation, not—as in the 1790, 1831, and 1909 Acts—its publication; protection would last until 50 years after the author's death. § 302(a). In these respects, the 1976 Act aligned United States copyright terms with the then-dominant international standard adopted under the Berne Convention for the Protection of Literary and Artistic Works. See H. R. Rep. No. 94–1476, p. 135 (1976). For anonymous works, pseudonymous works, and works made for hire, the 1976 Act provided a term of 75 years from publication or 100 years from creation, whichever expired first. § 302(c).

These new copyright terms, the 1976 Act instructed, governed all works not published by its effective date of January 1, 1978, regardless of when the works were created. §§ 302–303. For published works with existing copyrights as of that date, the 1976 Act granted a copyright term of 75 years from the date of publication, §§ 304(a) and (b), a 19-year increase over the 56-year term applicable under the 1909 Act.

The measure at issue here, the CTEA, installed the fourth major duration extension of federal copyrights.[2] Retaining the general structure of the 1976 Act, the CTEA enlarges the terms of all existing and future copyrights by 20 years. For works created by identified natural persons, the term now lasts from creation until 70 years after the author's

[2] Asserting that the last several decades have seen a proliferation of copyright legislation in departure from Congress' traditional pace of legislative amendment in this area, petitioners cite nine statutes passed between 1962 and 1974, each of which incrementally extended existing copyrights for brief periods. See Pub. L. 87–668, 76 Stat. 555; Pub. L. 89–142, 79 Stat. 581; Pub. L. 90–141, 81 Stat. 464; Pub. L. 90–416, 82 Stat. 397; Pub. L. 91–147, 83 Stat. 360; Pub. L. 91–555, 84 Stat. 1441; Pub. L. 92–170, 85 Stat. 490; Pub. L. 92–566, 86 Stat. 1181; Pub. L. 93–573, Title I, 88 Stat. 1873. As respondent (Attorney General Ashcroft) points out, however, these statutes were all temporary placeholders subsumed into the systemic changes effected by the 1976 Act. Brief for Respondent 9.

death. 17 U. S. C. § 302(a). This standard harmonizes the baseline United States copyright term with the term adopted by the European Union in 1993. See Council Directive 93/98/EEC of 29 October 1993 Harmonizing the Term of Protection of Copyright and Certain Related Rights, 1993 Official J. Eur. Coms. (L 290), p. 9 (EU Council Directive 93/98). For anonymous works, pseudonymous works, and works made for hire, the term is 95 years from publication or 120 years from creation, whichever expires first. 17 U. S. C. § 302(c).

Paralleling the 1976 Act, the CTEA applies these new terms to all works not published by January 1, 1978. §§ 302(a), 303(a). For works published before 1978 with existing copyrights as of the CTEA's effective date, the CTEA extends the term to 95 years from publication. §§ 304(a) and (b). Thus, in common with the 1831, 1909, and 1976 Acts, the CTEA's new terms apply to both future and existing copyrights.[3]

B

Petitioners' suit challenges the CTEA's constitutionality under both the Copyright Clause and the First Amendment. On cross-motions for judgment on the pleadings, the District Court entered judgment for the Attorney General (respondent here). 74 F. Supp. 2d 1 (DC 1999). The court held that the CTEA does not violate the "limited Times" restriction of the Copyright Clause because the CTEA's terms, though

[3] Petitioners argue that the 1790 Act must be distinguished from the later Acts on the ground that it covered existing *works* but did not extend existing *copyrights*. Reply Brief 3–7. The parties disagree on the question whether the 1790 Act's copyright term should be regarded in part as compensation for the loss of any then existing state- or common-law copyright protections. See Brief for Petitioners 28–30; Brief for Respondent 17, n. 9; Reply Brief 3–7. Without resolving that dispute, we underscore that the First Congress clearly did confer copyright protection on works that had already been created.

longer than the 1976 Act's terms, are still limited, not perpetual, and therefore fit within Congress' discretion. *Id.*, at 3. The court also held that "there are no First Amendment rights to use the copyrighted works of others." *Ibid.*

The Court of Appeals for the District of Columbia Circuit affirmed. 239 F. 3d 372 (2001). In that court's unanimous view, *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539 (1985), foreclosed petitioners' First Amendment challenge to the CTEA. 239 F. 3d, at 375. Copyright, the court reasoned, does not impermissibly restrict free speech, for it grants the author an exclusive right only to the specific form of expression; it does not shield any idea or fact contained in the copyrighted work, and it allows for "fair use" even of the expression itself. *Id.*, at 375–376.

A majority of the Court of Appeals also upheld the CTEA against petitioners' contention that the measure exceeds Congress' power under the Copyright Clause. Specifically, the court rejected petitioners' plea for interpretation of the "limited Times" prescription not discretely but with a view to the "preambular statement of purpose" contained in the Copyright Clause: "To promote the Progress of Science." *Id.*, at 377–378. Circuit precedent, *Schnapper* v. *Foley*, 667 F. 2d 102 (CADC 1981), the court determined, precluded that plea. In this regard, the court took into account petitioners' acknowledgment that the preamble itself places no substantive limit on Congress' legislative power. 239 F. 3d, at 378.

The appeals court found nothing in the constitutional text or its history to suggest that "a term of years for a copyright is not a 'limited Time' if it may later be extended for another 'limited Time.'" *Id.*, at 379. The court recounted that "the First Congress made the Copyright Act of 1790 applicable to subsisting copyrights arising under the copyright laws of the several states." *Ibid.* That construction of Congress' authority under the Copyright Clause "by [those] contemporary with [the Constitution's] formation," the court said, mer-

ited "very great" and in this case "almost conclusive" weight. *Ibid.* (quoting *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U. S. 53, 57 (1884)). As early as *McClurg* v. *Kingsland*, 1 How. 202 (1843), the Court of Appeals added, this Court had made it "plain" that the same Clause permits Congress to "amplify the terms of an existing patent." 239 F. 3d, at 380. The appeals court recognized that this Court has been similarly deferential to the judgment of Congress in the realm of copyright. *Ibid.* (citing *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417 (1984); *Stewart* v. *Abend*, 495 U. S. 207 (1990)).

Concerning petitioners' assertion that Congress might evade the limitation on its authority by stringing together "an unlimited number of 'limited Times,'" the Court of Appeals stated that such legislative misbehavior "clearly is not the situation before us." 239 F. 3d, at 379. Rather, the court noted, the CTEA "matches" the baseline term for "United States copyrights [with] the terms of copyrights granted by the European Union." *Ibid.* "[I]n an era of multinational publishers and instantaneous electronic transmission," the court said, "harmonization in this regard has obvious practical benefits" and is "a 'necessary and proper' measure to meet contemporary circumstances rather than a step on the way to making copyrights perpetual." *Ibid.*

Judge Sentelle dissented in part. He concluded that Congress lacks power under the Copyright Clause to expand the copyright terms of existing works. *Id.*, at 380–384. The Court of Appeals subsequently denied rehearing and rehearing en banc. 255 F. 3d 849 (2001).

We granted certiorari to address two questions: whether the CTEA's extension of existing copyrights exceeds Congress' power under the Copyright Clause; and whether the CTEA's extension of existing and future copyrights violates the First Amendment. 534 U. S. 1126 and 1160 (2002). We now answer those two questions in the negative and affirm.

II

A

We address first the determination of the courts below that Congress has authority under the Copyright Clause to extend the terms of existing copyrights. Text, history, and precedent, we conclude, confirm that the Copyright Clause empowers Congress to prescribe "limited Times" for copyright protection and to secure the same level and duration of protection for all copyright holders, present and future.

The CTEA's baseline term of life plus 70 years, petitioners concede, qualifies as a "limited Tim[e]" as applied to future copyrights.[4] Petitioners contend, however, that existing copyrights extended to endure for that same term are not "limited." Petitioners' argument essentially reads into the text of the Copyright Clause the command that a time prescription, once set, becomes forever "fixed" or "inalterable." The word "limited," however, does not convey a meaning so constricted. At the time of the Framing, that word meant what it means today: "confine[d] within certain bounds," "restrain[ed]," or "circumscribe[d]." S. Johnson, A Dictionary of the English Language (7th ed. 1785); see T. Sheridan, A Complete Dictionary of the English Language (6th ed. 1796) ("confine[d] within certain bounds"); Webster's Third New International Dictionary 1312 (1976) ("confined within limits"; "restricted in extent, number, or duration"). Thus understood, a timespan appropriately "limited" as applied to future copyrights does not automatically cease to be "limited" when applied to existing copyrights. And as we observe, *infra*, at 209–210, there is no cause to suspect that a

[4] We note again that JUSTICE BREYER makes no such concession. See *supra*, at 193, n. 1. He does not train his fire, as petitioners do, on Congress' choice to place existing and future copyrights in parity. Moving beyond the bounds of the parties' presentations, and with abundant policy arguments but precious little support from precedent, he would condemn Congress' entire product as irrational.

purpose to evade the "limited Times" prescription prompted Congress to adopt the CTEA.

To comprehend the scope of Congress' power under the Copyright Clause, "a page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921) (Holmes, J.). History reveals an unbroken congressional practice of granting to authors of works with existing copyrights the benefit of term extensions so that all under copyright protection will be governed evenhandedly under the same regime. As earlier recounted, see *supra*, at 194, the First Congress accorded the protections of the Nation's first federal copyright statute to existing and future works alike. 1790 Act § 1.[5] Since then, Congress has regularly applied

[5] This approach comported with English practice at the time. The Statute of Anne, 1710, 8 Ann. c. 19, provided copyright protection to books not yet composed or published, books already composed but not yet published, and books already composed and published. See *ibid.* ("[T]he author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer."); *ibid.* ("[T]he author of any book or books already printed . . . or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer.").

JUSTICE STEVENS stresses the rejection of a proposed amendment to the Statute of Anne that would have extended the term of existing copyrights, and reports that opponents of the extension feared it would perpetuate the monopoly position enjoyed by English booksellers. *Post*, at 232–233, and n. 9. But the English Parliament confronted a situation that never existed in the United States. Through the late 17th century, a government-sanctioned printing monopoly was held by the Stationers' Company, "the ancient London guild of printers and booksellers." M. Rose, Authors and Owners: The Invention of Copyright 4 (1993); see L. Patterson, Copyright in Historical Perspective ch. 3 (1968). Although

duration extensions to both existing and future copyrights. 1831 Act §§ 1, 16; 1909 Act §§ 23–24; 1976 Act §§ 302–303; 17 U. S. C. §§ 302–304.[6]

Because the Clause empowering Congress to confer copyrights also authorizes patents, congressional practice with respect to patents informs our inquiry. We count it significant that early Congresses extended the duration of numerous individual patents as well as copyrights. See, *e. g.*, Act of Jan. 7, 1808, ch. 6, 6 Stat. 70 (patent); Act of Mar. 3, 1809, ch. 35, 6 Stat. 80 (patent); Act of Feb. 7, 1815, ch. 36, 6 Stat. 147 (patent); Act of May 24, 1828, ch. 145, 6 Stat. 389 (copyright); Act of Feb. 11, 1830, ch. 13, 6 Stat. 403 (copyright);

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that legal monopoly ended in 1695, concerns about monopolistic practices remained, and the 18th-century English Parliament was resistant to any enhancement of booksellers' and publishers' entrenched position. See Rose, *supra*, at 52–56. In this country, in contrast, competition among publishers, printers, and booksellers was "intens[e]" at the time of the founding, and "there was not even a rough analog to the Stationers' Company on the horizon." Nachbar, Constructing Copyright's Mythology, 6 Green Bag 2d 37, 45 (2002). The Framers guarded against the future accumulation of monopoly power in booksellers and publishers by authorizing Congress to vest copyrights only in "Authors." JUSTICE STEVENS does not even attempt to explain how Parliament's response to England's experience with a publishing monopoly may be construed to impose a constitutional limitation on Congress' power to extend copyrights granted to "Authors."

[6] Moreover, the precise duration of a federal copyright has never been fixed at the time of the initial grant. The 1790 Act provided a federal copyright term of 14 years from the work's publication, renewable for an additional 14 years *if* the author survived and applied for an additional term. § 1. Congress retained that approach in subsequent statutes. See *Stewart* v. *Abend*, 495 U. S. 207, 217 (1990) ("Since the earliest copyright statute in this country, the copyright term of ownership has been split between an original term and a renewal term."). Similarly, under the method for measuring copyright terms established by the 1976 Act and retained by the CTEA, the baseline copyright term is measured in part by the life of the author, rendering its duration indeterminate at the time of the grant. See 1976 Act § 302(a); 17 U. S. C. § 302(a).

see generally Ochoa, Patent and Copyright Term Extension and the Constitution: A Historical Perspective, 49 J. Copyright Soc. 19 (2001). The courts saw no "limited Times" impediment to such extensions; renewed or extended terms were upheld in the early days, for example, by Chief Justice Marshall and Justice Story sitting as circuit justices. See *Evans* v. *Jordan*, 8 F. Cas. 872, 874 (No. 4,564) (CC Va. 1813) (Marshall, J.) ("Th[e] construction of the constitution which admits the renewal of a patent, is not controverted. A renewed patent . . . confers the same rights, with an original."), aff'd, 9 Cranch 199 (1815); *Blanchard* v. *Sprague*, 3 F. Cas. 648, 650 (No. 1,518) (CC Mass. 1839) (Story, J.) ("I never have entertained any doubt of the constitutional authority of congress" to enact a 14-year patent extension that "operates retrospectively"); see also *Evans* v. *Robinson*, 8 F. Cas. 886, 888 (No. 4,571) (CC Md. 1813) (Congresses "have the exclusive right . . . to limit the times for which a patent right shall be granted, and are not restrained from renewing a patent or prolonging" it.).[7]

Further, although prior to the instant case this Court did not have occasion to decide whether extending the duration of existing copyrights complies with the "limited Times" prescription, the Court has found no constitutional barrier to the legislative expansion of existing patents.[8] *McClurg* v.

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[7] JUSTICE STEVENS would sweep away these decisions, asserting that *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1 (1966), "flatly contradicts" them. *Post*, at 237. Nothing but wishful thinking underpins that assertion. The controversy in *Graham* involved no patent extension. *Graham* addressed an invention's very eligibility for patent protection, and spent no words on Congress' power to enlarge a patent's duration.

[8] JUSTICE STEVENS recites words from *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U. S. 225 (1964), supporting the uncontroversial proposition that a State may not "extend the life of a patent beyond its expiration date," *id.*, at 231, then boldly asserts that for the same reasons Congress may not do so either. See *post*, at 222, 226. But *Sears* placed no reins on Congress' authority to extend a patent's life. The full sentence in *Sears*, from which JUSTICE STEVENS extracts words, reads: "Obviously a State could not,

Kingsland, 1 How. 202 (1843), is the pathsetting precedent. The patentee in that case was unprotected under the law in force when the patent issued because he had allowed his employer briefly to practice the invention before he obtained the patent. Only upon enactment, two years later, of an exemption for such allowances did the patent become valid, retroactive to the time it issued. *McClurg* upheld retroactive application of the new law. The Court explained that the legal regime governing a particular patent "depend[s] on the law as it stood at the emanation of the patent, together with such changes as have been since made; for though they may be retrospective in their operation, that is not a sound objection to their validity." *Id.*, at 206.[9] Neither is it a sound

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consistently with the Supremacy Clause of the Constitution, extend the life of a patent beyond its expiration date or give a patent on an article which lacked the level of invention required for federal patents." 376 U. S., at 231. The point insistently made in *Sears* is no more and no less than this: *States* may not enact measures inconsistent with the federal patent laws. *Ibid.* ("[A] State cannot encroach upon the federal patent laws directly . . . [and] cannot . . . give protection of a kind that clashes with the objectives of the federal patent laws."). A decision thus rooted in the Supremacy Clause cannot be turned around to shrink congressional choices.

Also unavailing is JUSTICE STEVENS' appeal to language found in a private letter written by James Madison. *Post*, at 230, n. 6; see also dissenting opinion of BREYER, J., *post*, at 246–247, 260, 261. Respondent points to a better "demonstrat[ion]," *post*, at 226, n. 3 (STEVENS, J., dissenting), of Madison's and other Framers' understanding of the scope of Congress' power to extend patents: "[T]hen-President Thomas Jefferson—the first administrator of the patent system, and perhaps the Founder with the narrowest view of the copyright and patent powers—signed the 1808 and 1809 patent term extensions into law; . . . James Madison, who drafted the Constitution's 'limited Times' language, issued the extended patents under those laws as Secretary of State; and . . . Madison as President signed another patent term extension in 1815." Brief for Respondent 15.

[9] JUSTICE STEVENS reads *McClurg* to convey that "Congress cannot change the bargain between the public and the patentee in a way that disadvantages the patentee." *Post*, at 239. But *McClurg* concerned no

objection to the validity of a copyright term extension, enacted pursuant to the same constitutional grant of authority, that the enlarged term covers existing copyrights.

Congress' consistent historical practice of applying newly enacted copyright terms to future and existing copyrights reflects a judgment stated concisely by Representative Huntington at the time of the 1831 Act: "[J]ustice, policy, and equity alike forb[id]" that an "author who had sold his [work] a week ago, be placed in a worse situation than the author who should sell his work the day after the passing of [the] act." 7 Cong. Deb. 424 (1831); accord, Symposium, The Constitutionality of Copyright Term Extension, 18 Cardozo Arts & Ent. L. J. 651, 694 (2000) (Prof. Miller) ("[S]ince 1790, it has indeed been Congress's policy that the author of yesterday's work should not get a lesser reward than the author of tomorrow's work just because Congress passed a statute lengthening the term today."). The CTEA follows this historical practice by keeping the duration provisions of the 1976 Act largely in place and simply adding 20 years to each of them. Guided by text, history, and precedent, we cannot agree with petitioners' submission that extending the duration of existing copyrights is categorically beyond Congress' authority under the Copyright Clause.

Satisfied that the CTEA complies with the "limited Times" prescription, we turn now to whether it is a rational exercise of the legislative authority conferred by the Copyright Clause. On that point, we defer substantially to Congress.

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such change. To the contrary, as JUSTICE STEVENS acknowledges, *McClurg* held that use of an invention by the patentee's employer did not invalidate the inventor's 1834 patent, "even if it might have had that effect prior to the amendment of the patent statute in 1836." *Post*, at 239. In other words, *McClurg* evaluated the patentee's rights not simply in light of the patent law in force at the time the patent issued, but also in light of "such changes as ha[d] been since made." 1 How., at 206. It is thus inescapably plain that *McClurg* upheld the application of expanded patent protection to an existing patent.

Sony, 464 U. S., at 429 ("[I]t is Congress that has been assigned the task of defining the scope of the limited monopoly that should be granted to authors . . . in order to give the public appropriate access to their work product.").[10]

The CTEA reflects judgments of a kind Congress typically makes, judgments we cannot dismiss as outside the Legislature's domain. As respondent describes, see Brief for Respondent 37–38, a key factor in the CTEA's passage was a 1993 European Union (EU) directive instructing EU members to establish a copyright term of life plus 70 years. EU Council Directive 93/98, Art. 1(1), p. 11; see 144 Cong. Rec. S12377–S12378 (daily ed. Oct. 12, 1998) (statement of Sen. Hatch). Consistent with the Berne Convention, the EU directed its members to deny this longer term to the works of any non-EU country whose laws did not secure the same extended term. See Berne Conv. Art. 7(8); P. Goldstein, International Copyright § 5.3, p. 239 (2001). By extending the baseline United States copyright term to life plus 70 years, Congress sought to ensure that American authors would re-

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[10] JUSTICE BREYER would adopt a heightened, three-part test for the constitutionality of copyright enactments. *Post*, at 245. He would invalidate the CTEA as irrational in part because, in his view, harmonizing the United States and European Union baseline copyright terms "apparent[ly]" fails to achieve "significant" uniformity. *Post*, at 264. But see *infra* this page and 206. The novelty of the "rational basis" approach he presents is plain. Cf. *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 383 (2001) (BREYER, J., dissenting) ("Rational-basis review—with its presumptions favoring constitutionality—is 'a paradigm of *judicial* restraint.'" (quoting *FCC* v. *Beach Communications, Inc.*, 508 U. S. 307, 314 (1993))). Rather than subjecting Congress' legislative choices in the copyright area to heightened judicial scrutiny, we have stressed that "it is not our role to alter the delicate balance Congress has labored to achieve." *Stewart* v. *Abend*, 495 U. S., at 230; see *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 429 (1984). Congress' exercise of its Copyright Clause authority must be rational, but JUSTICE BREYER's stringent version of rationality is unknown to our literary property jurisprudence.

ceive the same copyright protection in Europe as their European counterparts.[11] The CTEA may also provide greater incentive for American and other authors to create and disseminate their work in the United States. See Perlmutter, Participation in the International Copyright System as a Means to Promote the Progress of Science and Useful Arts, 36 Loyola (LA) L. Rev. 323, 330 (2002) ("[M]atching th[e] level of [copyright] protection in the United States [to that in the EU] can ensure stronger protection for U. S. works abroad and avoid competitive disadvantages vis-à-vis foreign rightholders."); see also *id.*, at 332 (the United States could not "play a leadership role" in the give-and-take evolution of the international copyright system, indeed it would "lose all flexibility," "if the only way to promote the progress of science were to provide incentives to create new works").[12]

In addition to international concerns,[13] Congress passed the CTEA in light of demographic, economic, and technologi-

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[11] Responding to an inquiry whether copyrights could be extended "forever," Register of Copyrights Marybeth Peters emphasized the dominant reason for the CTEA: "There certainly are proponents of perpetual copyright: We heard that in our proceeding on term extension. The Songwriters Guild suggested a perpetual term. However, our Constitution says limited times, but there really isn't a very good indication on what limited times is. The reason why you're going to life-plus-70 today is because Europe has gone that way . . . ." Copyright Term, Film Labeling, and Film Preservation Legislation: Hearings on H. R. 989 et al. before the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary, 104th Cong., 1st Sess., 230 (1995) (hereinafter House Hearings).

[12] The author of the law review article cited in text, Shira Perlmutter, currently a vice president of AOL Time Warner, was at the time of the CTEA's enactment Associate Register for Policy and International Affairs, United States Copyright Office.

[13] See also Austin, Does the Copyright Clause Mandate Isolationism? 26 Colum. J. L. & Arts 17, 59 (2002) (cautioning against "an isolationist reading of the Copyright Clause that is in tension with . . . America's international copyright relations over the last hundred or so years").

cal changes, Brief for Respondent 25–26, 33, and nn. 23 and 24,[14] and rationally credited projections that longer terms would encourage copyright holders to invest in the restoration and public distribution of their works, *id.*, at 34–37; see H. R. Rep. No. 105–452, p. 4 (1998) (term extension "provide[s] copyright owners generally with the incentive to restore older works and further disseminate them to the public").[15]

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[14] Members of Congress expressed the view that, as a result of increases in human longevity and in parents' average age when their children are born, the pre-CTEA term did not adequately secure "the right to profit from licensing one's work during one's lifetime and to take pride and comfort in knowing that one's children—and perhaps their children—might also benefit from one's posthumous popularity." 141 Cong. Rec. 6553 (1995) (statement of Sen. Feinstein); see 144 Cong. Rec. S12377 (daily ed. Oct. 12, 1998) (statement of Sen. Hatch) ("Among the main developments [compelling reconsideration of the 1976 Act's term] is the effect of demographic trends, such as increasing longevity and the trend toward rearing children later in life, on the effectiveness of the life-plus-50 term to provide adequate protection for American creators and their heirs."). Also cited was "the failure of the U. S. copyright term to keep pace with the substantially increased commercial life of copyrighted works resulting from the rapid growth in communications media." *Ibid.* (statement of Sen. Hatch); cf. *Sony*, 464 U. S., at 430–431 ("From its beginning, the law of copyright has developed in response to significant changes in technology. . . . [A]s new developments have occurred in this country, it has been the Congress that has fashioned the new rules that new technology made necessary.").

[15] JUSTICE BREYER urges that the economic incentives accompanying copyright term extension are too insignificant to "mov[e]" any author with a "rational economic perspective." *Post*, at 255; see *post*, at 254–257. Calibrating rational economic incentives, however, like "fashion[ing] . . . new rules [in light of] new technology," *Sony*, 464 U. S., at 431, is a task primarily for Congress, not the courts. Congress heard testimony from a number of prominent artists; each expressed the belief that the copyright system's assurance of fair compensation for themselves and their heirs was an incentive to create. See, *e. g.*, House Hearings 233–239 (statement of Quincy Jones); Copyright Term Extension Act of 1995: Hearing before the Senate Committee on the Judiciary, 104th Cong., 1st Sess., 55–56 (1995)

In sum, we find that the CTEA is a rational enactment; we are not at liberty to second-guess congressional determinations and policy judgments of this order, however debatable or arguably unwise they may be. Accordingly, we cannot conclude that the CTEA—which continues the unbroken congressional practice of treating future and existing copyrights in parity for term extension purposes—is an impermissible exercise of Congress' power under the Copyright Clause.

B

Petitioners' Copyright Clause arguments rely on several novel readings of the Clause. We next address these arguments and explain why we find them unpersuasive.

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Petitioners contend that even if the CTEA's 20-year term extension is literally a "limited Tim[e]," permitting Congress to extend existing copyrights allows it to evade the "limited Times" constraint by creating effectively perpetual copyrights through repeated extensions. We disagree.

(statement of Bob Dylan); *id.*, at 56–57 (statement of Don Henley); *id.*, at 57 (statement of Carlos Santana). We would not take Congress to task for crediting this evidence which, as JUSTICE BREYER acknowledges, reflects general "propositions about the value of incentives" that are "undeniably true." *Post*, at 255.

Congress also heard testimony from Register of Copyrights Marybeth Peters and others regarding the economic incentives created by the CTEA. According to the Register, extending the copyright for existing works "could . . . provide additional income that would finance the production and publication of new works." House Hearings 158. "Authors would not be able to continue to create," the Register explained, "unless they earned income on their finished works. The public benefits not only from an author's original work but also from his or her further creations. Although this truism may be illustrated in many ways, one of the best examples is Noah Webster[,] who supported his entire family from the earnings on his speller and grammar during the twenty years he took to complete his dictionary." *Id.*, at 165.

As the Court of Appeals observed, a regime of perpetual copyrights "clearly is not the situation before us." 239 F. 3d, at 379. Nothing before this Court warrants construction of the CTEA's 20-year term extension as a congressional attempt to evade or override the "limited Times" constraint.[16] Critically, we again emphasize, petitioners fail to

[16] JUSTICE BREYER agrees that "Congress did not intend to act unconstitutionally" when it enacted the CTEA, *post,* at 256, yet in his very next breath, he seems to make just that accusation, *ibid.* What else is one to glean from his selection of scattered statements from individual Members of Congress? He does not identify any statement in the statutory text that installs a perpetual copyright, for there is none. But even if the statutory text were sufficiently ambiguous to warrant recourse to legislative history, JUSTICE BREYER's selections are not the sort to which this Court accords high value: "In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those [Members of Congress] involved in drafting and studying proposed legislation.'" *Garcia* v. *United States,* 469 U. S. 70, 76 (1984) (quoting *Zuber* v. *Allen,* 396 U. S. 168, 186 (1969)). The House and Senate Reports accompanying the CTEA reflect no purpose to make copyright a forever thing. Notably, the Senate Report expressly acknowledged that the Constitution "clearly precludes Congress from granting unlimited protection for copyrighted works," S. Rep. No. 104–315, p. 11 (1996), and disclaimed any intent to contravene that prohibition, *ibid.* Members of Congress instrumental in the CTEA's passage spoke to similar effect. See, *e. g.,* 144 Cong. Rec. H1458 (daily ed. Mar. 25, 1998) (statement of Rep. Coble) (observing that "copyright protection should be for a limited time only" and that "[p]erpetual protection does not benefit society").

JUSTICE BREYER nevertheless insists that the "economic effect" of the CTEA is to make the copyright term "virtually perpetual." *Post,* at 243. Relying on formulas and assumptions provided in an *amicus* brief supporting petitioners, he stresses that the CTEA creates a copyright term worth 99.8% of the value of a perpetual copyright. *Post,* at 254–256. If JUSTICE BREYER's calculations were a basis for holding the CTEA unconstitutional, then the 1976 Act would surely fall as well, for—under the same assumptions he indulges—the term set by that Act secures 99.4% of the value of a perpetual term. See Brief for George A. Akerlof et al. as *Amici Curiae* 6, n. 6 (describing the relevant formula). Indeed, on that analysis even the "limited" character of the 1909 (97.7%) and 1831 (94.1%)

show how the CTEA crosses a constitutionally significant threshold with respect to "limited Times" that the 1831, 1909, and 1976 Acts did not. See *supra*, at 194–196; Austin, *supra* n. 13, at 56 ("If extending copyright protection to works already in existence is constitutionally suspect," so is "extending the protections of U. S. copyright law to works by foreign authors that had already been created and even first published when the federal rights attached."). Those earlier Acts did not create perpetual copyrights, and neither does the CTEA.[17]

2

Petitioners dominantly advance a series of arguments all premised on the proposition that Congress may not extend an existing copyright absent new consideration from the author. They pursue this main theme under three headings. Petitioners contend that the CTEA's extension of existing copyrights (1) overlooks the requirement of "originality," (2) fails to "promote the Progress of Science," and (3) ignores copyright's *quid pro quo*.

Acts might be suspect. JUSTICE BREYER several times places the Founding Fathers on his side. See, *e. g.*, *post*, at 246–247, 260, 261. It is doubtful, however, that those architects of our Nation, in framing the "limited Times" prescription, thought in terms of the calculator rather than the calendar.

[17] Respondent notes that the CTEA's life-plus-70-years baseline term is expected to produce an average copyright duration of 95 years, and that this term "resembles some other long-accepted durational practices in the law, such as 99-year leases of real property and bequests within the rule against perpetuities." Brief for Respondent 27, n. 18. Whether such referents mark the outer boundary of "limited Times" is not before us today. JUSTICE BREYER suggests that the CTEA's baseline term extends beyond that typically permitted by the traditional rule against perpetuities. *Post*, at 256–257. The traditional common-law rule looks to lives in being plus 21 years. Under that rule, the period before a bequest vests could easily equal or exceed the anticipated average copyright term under the CTEA. If, for example, the vesting period on a deed were defined with reference to the life of an infant, the sum of the measuring life plus 21 years could commonly add up to 95 years.

Petitioners' "originality" argument draws on *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340 (1991). In *Feist*, we observed that "[t]he *sine qua non* of copyright is originality," *id.*, at 345, and held that copyright protection is unavailable to "a narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent," *id.*, at 359. Relying on *Feist*, petitioners urge that even if a work is sufficiently "original" to qualify for copyright protection in the first instance, any extension of the copyright's duration is impermissible because, once published, a work is no longer original.

Feist, however, did not touch on the duration of copyright protection. Rather, the decision addressed the core question of copyrightability, *i. e.*, the "creative spark" a work must have to be eligible for copyright protection at all. Explaining the originality requirement, *Feist* trained on the Copyright Clause words "Authors" and "Writings." *Id.*, at 346–347. The decision did not construe the "limited Times" for which a work may be protected, and the originality requirement has no bearing on that prescription.

More forcibly, petitioners contend that the CTEA's extension of existing copyrights does not "promote the Progress of Science" as contemplated by the preambular language of the Copyright Clause. Art. I, § 8, cl. 8. To sustain this objection, petitioners do not argue that the Clause's preamble is an independently enforceable limit on Congress' power. See 239 F. 3d, at 378 (Petitioners acknowledge that "the preamble of the Copyright Clause is not a substantive limit on Congress' legislative power." (internal quotation marks omitted)). Rather, they maintain that the preambular language identifies the sole end to which Congress may legislate; accordingly, they conclude, the meaning of "limited Times" must be "determined in light of that specified end." Brief for Petitioners 19. The CTEA's extension of existing copyrights categorically fails to "promote the Progress of Science," petitioners argue, because it does not stimulate the

creation of new works but merely adds value to works already created.

As petitioners point out, we have described the Copyright Clause as "both a grant of power and a limitation," *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1, 5 (1966), and have said that "[t]he primary objective of copyright" is "[t]o promote the Progress of Science," *Feist*, 499 U. S., at 349. The "constitutional command," we have recognized, is that Congress, to the extent it enacts copyright laws at all, create a "system" that "promote[s] the Progress of Science." *Graham*, 383 U. S., at 6.[18]

We have also stressed, however, that it is generally for Congress, not the courts, to decide how best to pursue the Copyright Clause's objectives. See *Stewart* v. *Abend*, 495 U. S., at 230 ("Th[e] evolution of the duration of copyright protection tellingly illustrates the difficulties Congress faces . . . . [I]t is not our role to alter the delicate balance

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[18] JUSTICE STEVENS' characterization of reward to the author as "a secondary consideration" of copyright law, *post*, at 227, n. 4 (internal quotation marks omitted), understates the relationship between such rewards and the "Progress of Science." As we have explained, "[t]he economic philosophy behind the [Copyright] [C]lause . . . is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors." *Mazer* v. *Stein*, 347 U. S. 201, 219 (1954). Accordingly, "copyright law *celebrates* the profit motive, recognizing that the incentive to profit from the exploitation of copyrights will redound to the public benefit by resulting in the proliferation of knowledge. . . . The profit motive is the engine that ensures the progress of science." *American Geophysical Union* v. *Texaco Inc.*, 802 F. Supp. 1, 27 (SDNY 1992), aff'd, 60 F. 3d 913 (CA2 1994). Rewarding authors for their creative labor and "promot[ing] . . . Progress" are thus complementary; as James Madison observed, in copyright "[t]he public good fully coincides . . . with the claims of individuals." The Federalist No. 43, p. 272 (C. Rossiter ed. 1961). JUSTICE BREYER's assertion that "copyright statutes must serve public, not private, ends," *post*, at 247, similarly misses the mark. The two ends are not mutually exclusive; copyright law serves public ends by providing individuals with an incentive to pursue private ones.

Congress has labored to achieve."); *Sony*, 464 U. S., at 429 ("[I]t is Congress that has been assigned the task of defining the scope of [rights] that should be granted to authors or to inventors in order to give the public appropriate access to their work product."); *Graham*, 383 U. S., at 6 ("Within the limits of the constitutional grant, the Congress may, of course, implement the stated purpose of the Framers by selecting the policy which in its judgment best effectuates the constitutional aim."). The justifications we earlier set out for Congress' enactment of the CTEA, *supra*, at 205–207, provide a rational basis for the conclusion that the CTEA "promote[s] the Progress of Science."

On the issue of copyright duration, Congress, from the start, has routinely applied new definitions or adjustments of the copyright term to both future works and existing works not yet in the public domain.[19] Such consistent congressional practice is entitled to "very great weight, and when it is remembered that the rights thus established have not been disputed during a period of [over two] centur[ies], it is almost conclusive." *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U. S., at 57. Indeed, "[t]his Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given [the Constitution's] provisions." *Myers* v. *United States*, 272 U. S. 52, 175 (1926). Congress' unbroken practice since the founding gen-

[19] As we have noted, see *supra*, at 196, n. 3, petitioners seek to distinguish the 1790 Act from those that followed. They argue that by requiring authors seeking its protection to surrender whatever rights they had under state law, the 1790 Act enhanced uniformity and certainty and thus "promote[d] . . . Progress." See Brief for Petitioners 28–31. This account of the 1790 Act simply confirms, however, that the First Congress understood it could "promote . . . Progress" by extending copyright protection to existing works. Every subsequent adjustment of copyright's duration, including the CTEA, reflects a similar understanding.

eration thus overwhelms petitioners' argument that the CTEA's extension of existing copyrights fails *per se* to "promote the Progress of Science."[20]

Closely related to petitioners' preambular argument, or a variant of it, is their assertion that the Copyright Clause "imbeds a quid pro quo." Brief for Petitioners 23. They contend, in this regard, that Congress may grant to an "Autho[r]" an "exclusive Right" for a "limited Tim[e]," but only in exchange for a "Writin[g]." Congress' power to confer copyright protection, petitioners argue, is thus contingent upon an exchange: The author of an original work receives an "exclusive Right" for a "limited Tim[e]" in exchange for a dedication to the public thereafter. Extending an existing copyright without demanding additional consideration, petitioners maintain, bestows an unpaid-for benefit on copyright holders and their heirs, in violation of the *quid pro quo* requirement.

We can demur to petitioners' description of the Copyright Clause as a grant of legislative authority empowering Congress "to secure a bargain—this for that." *Id.*, at 16; see *Mazer* v. *Stein*, 347 U. S. 201, 219 (1954) ("The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and useful Arts.' "). But the legislative evolution earlier recalled demonstrates what the bargain entails. Given the consistent placement of existing copyright

[20] JUSTICE STEVENS, *post*, at 235, refers to the "legislative veto" held unconstitutional in *INS* v. *Chadha*, 462 U. S. 919 (1983), and observes that we reached that decision despite its impact on federal laws geared to our "contemporary political system," *id.*, at 967 (White, J., dissenting). Placing existing works in parity with future works for copyright purposes, in contrast, is not a similarly pragmatic endeavor responsive to modern times. It is a measure of the kind Congress has enacted under its Patent and Copyright Clause authority since the founding generation. See *supra*, at 194–196.

holders in parity with future holders, the author of a work created in the last 170 years would reasonably comprehend, as the "this" offered her, a copyright not only for the time in place when protection is gained, but also for any renewal or extension legislated during that time.[21] Congress could rationally seek to "promote . . . Progress" by including in every copyright statute an express guarantee that authors would receive the benefit of any later legislative extension of the copyright term. Nothing in the Copyright Clause bars Congress from creating the same incentive by adopting the same position as a matter of unbroken practice. See Brief for Respondent 31–32.

Neither *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U. S. 225 (1964), nor *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141 (1989), is to the contrary. In both cases, we invalidated the application of certain state laws as inconsistent with the federal patent regime. *Sears*, 376 U. S., at 231–233; *Bonito*, 489 U. S., at 152. Describing Congress' constitutional authority to confer patents, *Bonito Boats* noted: "The Patent Clause itself reflects a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the 'Progress of Science and useful Arts.'" *Id.*, at 146.

[21] Standard copyright assignment agreements reflect this expectation. See, *e. g.*, A. Kohn & B. Kohn, Music Licensing 471 (3d ed. 1992–2002) (short form copyright assignment for musical composition, under which assignor conveys all rights to the work, "including the copyrights and proprietary rights therein and in any and all versions of said musical composition(s), and any renewals and extensions thereof (whether presently available *or subsequently available as a result of intervening legislation*)" (emphasis added)); 5 M. Nimmer & D. Nimmer, Copyright §21.11[B], p. 21–305 (2002) (short form copyright assignment under which assignor conveys all assets relating to the work, "including without limitation, copyrights and renewals and/or extensions thereof"); 6 *id.*, §30.04[B][1], p. 30–325 (form composer-producer agreement under which composer "assigns to Producer all rights (copyrights, rights under copyright and otherwise, whether now or hereafter known) and all renewals and extensions (as may now or hereafter exist)").

Sears similarly stated that "[p]atents are not given as favors . . . but are meant to encourage invention by rewarding the inventor with the right, limited to a term of years fixed by the patent, to exclude others from the use of his invention." 376 U. S., at 229. Neither case concerned the extension of a patent's duration. Nor did either suggest that such an extension might be constitutionally infirm. Rather, *Bonito Boats* reiterated the Court's unclouded understanding: "It is for Congress to determine if the present system" effectuates the goals of the Copyright and Patent Clause. 489 U. S., at 168. And as we have documented, see *supra*, at 201–204, Congress has many times sought to effectuate those goals by extending existing patents.

We note, furthermore, that patents and copyrights do not entail the same exchange, and that our references to a *quid pro quo* typically appear in the patent context. See, *e. g.*, *J. E. M. Ag Supply, Inc.* v. *Pioneer Hi-Bred International, Inc.*, 534 U. S. 124, 142 (2001) ("The disclosure required by the Patent Act is 'the *quid pro quo* of the right to exclude.'" (quoting *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U. S. 470, 484 (1974))); *Bonito Boats*, 489 U. S., at 161 ("the *quid pro quo* of substantial creative effort required by the federal [patent] statute"); *Brenner* v. *Manson*, 383 U. S. 519, 534 (1966) ("The basic *quid pro quo* . . . for granting a patent monopoly is the benefit derived by the public from an invention with substantial utility."); *Pennock* v. *Dialogue*, 2 Pet. 1, 23 (1829) (If an invention is already commonly known and used when the patent is sought, "there might be sound reason for presuming, that the legislature did not intend to grant an exclusive right," given the absence of a "*quid pro quo.*"). This is understandable, given that immediate disclosure is not the objective of, but is *exacted from*, the patentee. It is the price paid for the exclusivity secured. See *J. E. M. Ag Supply*, 534 U. S., at 142. For the author seeking copyright protection, in contrast, disclosure is the desired objective, not something exacted from the author in exchange for the copy-

right. Indeed, since the 1976 Act, copyright has run from creation, not publication. See 1976 Act § 302(a); 17 U. S. C. § 302(a).

Further distinguishing the two kinds of intellectual property, copyright gives the holder no monopoly on any knowledge. A reader of an author's writing may make full use of any fact or idea she acquires from her reading. See § 102(b). The grant of a patent, on the other hand, does prevent full use by others of the inventor's knowledge. See Brief for Respondent 22; *Alfred Bell & Co.* v. *Catalda Fine Arts*, 191 F. 2d 99, 103, n. 16 (CA2 1951) (The monopoly granted by a copyright "is not a monopoly of knowledge. The grant of a patent does prevent full use being made of knowledge, but the reader of a book is not by the copyright laws prevented from making full use of any information he may acquire from his reading." (quoting W. Copinger, Law of Copyright 2 (7th ed. 1936))). In light of these distinctions, one cannot extract from language in our patent decisions—language not trained on a grant's duration—genuine support for petitioners' bold view. Accordingly, we reject the proposition that a *quid pro quo* requirement stops Congress from expanding copyright's term in a manner that puts existing and future copyrights in parity.[22]

3

As an alternative to their various arguments that extending existing copyrights violates the Copyright Clause *per se*, petitioners urge heightened judicial review of such extensions to ensure that they appropriately pursue the purposes of the Clause. See Brief for Petitioners 31–32. Specifically,

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[22] The fact that patent and copyright involve different exchanges does not, of course, mean that we may not be guided in our "limited Times" analysis by Congress' repeated extensions of existing patents. See *supra*, at 201–204. If patent's *quid pro quo* is more exacting than copyright's, then Congress' repeated extension of existing patents without constitutional objection suggests even more strongly that similar legislation with respect to copyrights is constitutionally permissible.

petitioners ask us to apply the "congruence and proportionality" standard described in cases evaluating exercises of Congress' power under § 5 of the Fourteenth Amendment. See, *e. g.*, *City of Boerne* v. *Flores*, 521 U. S. 507 (1997). But we have never applied that standard outside the § 5 context; it does not hold sway for judicial review of legislation enacted, as copyright laws are, pursuant to Article I authorization.

Section 5 authorizes Congress to *enforce* commands contained in and incorporated into the Fourteenth Amendment. Amdt. 14, § 5 ("The Congress shall have power to *enforce*, by appropriate legislation, the provisions of this article." (emphasis added)). The Copyright Clause, in contrast, empowers Congress to *define* the scope of the substantive right. See *Sony*, 464 U. S., at 429. Judicial deference to such congressional definition is "but a corollary to the grant to Congress of any Article I power." *Graham*, 383 U. S., at 6. It would be no more appropriate for us to subject the CTEA to "congruence and proportionality" review under the Copyright Clause than it would be for us to hold the Act unconstitutional *per se*.

For the several reasons stated, we find no Copyright Clause impediment to the CTEA's extension of existing copyrights.

III

Petitioners separately argue that the CTEA is a content-neutral regulation of speech that fails heightened judicial review under the First Amendment.[23] We reject petitioners'

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[23] Petitioners originally framed this argument as implicating the CTEA's extension of both existing and future copyrights. See Pet. for Cert. i. Now, however, they train on the CTEA's extension of existing copyrights and urge against consideration of the CTEA's First Amendment validity as applied to future copyrights. See Brief for Petitioners 39–48; Reply Brief 16–17; Tr. of Oral Arg. 11–13. We therefore consider petitioners' argument as so limited. We note, however, that petitioners do not explain how their First Amendment argument is moored to the prospective/retrospective line they urge us to draw, nor do they say whether or how their

plea for imposition of uncommonly strict scrutiny on a copyright scheme that incorporates its own speech-protective purposes and safeguards. The Copyright Clause and First Amendment were adopted close in time. This proximity indicates that, in the Framers' view, copyright's limited monopolies are compatible with free speech principles. Indeed, copyright's purpose is to *promote* the creation and publication of free expression. As *Harper & Row* observed: "[T]he Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." 471 U. S., at 558.

In addition to spurring the creation and publication of new expression, copyright law contains built-in First Amendment accommodations. See *id.*, at 560. First, it distinguishes between ideas and expression and makes only the latter eligible for copyright protection. Specifically, 17 U. S. C. § 102(b) provides: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." As we said in *Harper & Row*, this "idea/expression dichotomy strike[s] a definitional balance between the First Amendment and the Copyright Act by permitting free communication of facts while still protecting an author's expression." 471 U. S., at 556 (internal quotation marks omitted). Due to this distinction, every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at the moment of publication. See *Feist*, 499 U. S., at 349–350.

Second, the "fair use" defense allows the public to use not only facts and ideas contained in a copyrighted work, but also expression itself in certain circumstances. Codified at 17 U. S. C. § 107, the defense provides: "[T]he fair use of a

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free speech argument applies to copyright duration but not to other aspects of copyright protection, notably scope.

copyrighted work, including such use by reproduction in copies . . . , for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." The fair use defense affords considerable "latitude for scholarship and comment," *Harper & Row*, 471 U. S., at 560, and even for parody, see *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569 (1994) (rap group's musical parody of Roy Orbison's "Oh, Pretty Woman" may be fair use).

The CTEA itself supplements these traditional First Amendment safeguards. First, it allows libraries, archives, and similar institutions to "reproduce" and "distribute, display, or perform in facsimile or digital form" copies of certain published works "during the last 20 years of any term of copyright . . . for purposes of preservation, scholarship, or research" if the work is not already being exploited commercially and further copies are unavailable at a reasonable price. 17 U. S. C. § 108(h); see Brief for Respondent 36. Second, Title II of the CTEA, known as the Fairness in Music Licensing Act of 1998, exempts small businesses, restaurants, and like entities from having to pay performance royalties on music played from licensed radio, television, and similar facilities. 17 U. S. C. § 110(5)(B); see Brief for Representative F. James Sensenbrenner, Jr., et al. as *Amici Curiae* 5–6, n. 3.

Finally, the case petitioners principally rely upon for their First Amendment argument, *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622 (1994), bears little on copyright. The statute at issue in *Turner* required cable operators to carry and transmit broadcast stations through their proprietary cable systems. Those "must-carry" provisions, we explained, implicated "the heart of the First Amendment," namely, "the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Id.*, at 641.

The CTEA, in contrast, does not oblige anyone to reproduce another's speech against the carrier's will. Instead, it protects authors' original expression from unrestricted exploitation. Protection of that order does not raise the free speech concerns present when the government compels or burdens the communication of particular facts or ideas. The First Amendment securely protects the freedom to make—or decline to make—one's own speech; it bears less heavily when speakers assert the right to make other people's speeches. To the extent such assertions raise First Amendment concerns, copyright's built-in free speech safeguards are generally adequate to address them. We recognize that the D. C. Circuit spoke too broadly when it declared copyrights "categorically immune from challenges under the First Amendment." 239 F. 3d, at 375. But when, as in this case, Congress has not altered the traditional contours of copyright protection, further First Amendment scrutiny is unnecessary. See *Harper & Row*, 471 U. S., at 560; cf. *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522 (1987).[24]

IV

If petitioners' vision of the Copyright Clause held sway, it would do more than render the CTEA's duration extensions unconstitutional as to existing works. Indeed, petitioners' assertion that the provisions of the CTEA are not severable would make the CTEA's enlarged terms invalid even as to

[24] We are not persuaded by petitioners' attempt to distinguish *Harper & Row* on the ground that it involved an infringement suit rather than a declaratory action of the kind here presented. As respondent observes, the same legal question can arise in either posture. See Brief for Respondent 42. In both postures, it is appropriate to construe copyright's internal safeguards to accommodate First Amendment concerns. Cf. *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 78 (1994) ("It is . . . incumbent upon us to read the statute to eliminate [serious constitutional] doubts so long as such a reading is not plainly contrary to the intent of Congress.").

tomorrow's work. The 1976 Act's time extensions, which set the pattern that the CTEA followed, would be vulnerable as well.

As we read the Framers' instruction, the Copyright Clause empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause. See *Graham*, 383 U. S., at 6 (Congress may "implement the stated purpose of the Framers by selecting the policy which *in its judgment* best effectuates the constitutional aim." (emphasis added)). Beneath the facade of their inventive constitutional interpretation, petitioners forcefully urge that Congress pursued very bad policy in prescribing the CTEA's long terms. The wisdom of Congress' action, however, is not within our province to second-guess. Satisfied that the legislation before us remains inside the domain the Constitution assigns to the First Branch, we affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE STEVENS, dissenting.

Writing for a unanimous Court in 1964, Justice Black stated that it is obvious that a State could not "extend the life of a patent beyond its expiration date," *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U. S. 225, 231 (1964).[1] As I shall explain, the reasons why a State may not extend the life of a patent apply to Congress as well. If Congress may not expand the scope of a patent monopoly, it also may not extend

[1] Justice Harlan wrote a brief concurrence, but did not disagree with this statement. Justice Black's statement echoed a portion of Attorney General Wirt's argument in *Gibbons* v. *Ogden*, 9 Wheat. 1, 171 (1824): "The law of Congress declares, that all inventors of useful improvements throughout the United States, shall be entitled to the exclusive right in their discoveries for fourteen years *only*. The law of New-York declares, that this inventor shall be entitled to the exclusive use of his discovery for thirty years, and as much longer as the State shall permit. The law of Congress, by limiting the exclusive right to fourteen years, in effect declares, that after the expiration of that time, the discovery shall be the common right of the whole people of the United States."

the life of a copyright beyond its expiration date. Accordingly, insofar as the 1998 Sonny Bono Copyright Term Extension Act, 112 Stat. 2827, purported to extend the life of unexpired copyrights, it is invalid. Because the majority's contrary conclusion rests on the mistaken premise that this Court has virtually no role in reviewing congressional grants of monopoly privileges to authors, inventors, and their successors, I respectfully dissent.

I

The authority to issue copyrights stems from the same Clause in the Constitution that created the patent power. It provides:

> "Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, § 8, cl. 8.

It is well settled that the Clause is "both a grant of power and a limitation" and that Congress "may not overreach the restraints imposed by the stated constitutional purpose." *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1, 5–6 (1966). As we have made clear in the patent context, that purpose has two dimensions. Most obviously the grant of exclusive rights to their respective writings and discoveries is intended to encourage the creativity of "Authors and Inventors." But the requirement that those exclusive grants be for "limited Times" serves the ultimate purpose of promoting the "Progress of Science and useful Arts" by guaranteeing that those innovations will enter the public domain as soon as the period of exclusivity expires:

> "Once the patent issues, it is strictly construed, *United States* v. *Masonite Corp.*, 316 U. S. 265, 280 (1942), it cannot be used to secure any monopoly beyond that contained in the patent, *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488, 492 (1942), . . . and especially relevant

> here, when the patent expires the monopoly created by it expires, too, and the right to make the article—including the right to make it in precisely the shape it carried when patented—passes to the public. *Kellogg Co.* v. *National Biscuit Co.*, 305 U. S. 111, 120–122 (1938); *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 185 (1896)." *Sears, Roebuck & Co.*, 376 U. S., at 230.

It is that ultimate purpose that explains why a patent may not issue unless it discloses the invention in such detail that one skilled in the art may copy it. See, *e. g.*, *Grant* v. *Raymond*, 6 Pet. 218, 247 (1832) (Marshall, C. J.) ("The third section [of the 1793 Act] requires, as preliminary to a patent, a correct specification and description of the thing discovered. This is necessary in order to give the public, after the privilege shall expire, the advantage for which the privilege is allowed, and is the foundation of the power to issue the patent"). Complete disclosure as a precondition to the issuance of a patent is part of the *quid pro quo* that justifies the limited monopoly for the inventor as consideration for full and immediate access by the public when the limited time expires.[2]

Almost two centuries ago the Court plainly stated that public access to inventions at the earliest possible date was the essential purpose of the Clause:

> "While one great object was, by holding out a reasonable reward to inventors and giving them an exclusive right to their inventions for a limited period, to stimulate the efforts of genius; the main object was 'to promote the

[2] Attorney General Wirt made this precise point in his argument in *Gibbons* v. *Ogden*, 9 Wheat., at 175: "The limitation is not for the advantage of the inventor, but of society at large, which is to take the benefit of the invention after the period of limitation has expired. The patentee pays a duty on his patent, which is an effective source of revenue to the United States. It is virtually a contract between each patentee and the people of the United States, by which the time of exclusive and secure enjoyment is limited, and then the benefit of the discovery results to the public."

> progress of science and useful arts;' and this could be done best, by giving the public at large a right to make, construct, use, and vend the thing invented, at as early a period as possible, having a due regard to the rights of the inventor. If an inventor should be permitted to hold back from the knowledge of the public the secrets of his invention; if he should for a long period of years retain the monopoly, and make, and sell his invention publicly, and thus gather the whole profits of it, relying upon his superior skill and knowledge of the structure; and then, and then only, when the danger of competition should force him to secure the exclusive right, he should be allowed to take out a patent, and thus exclude the public from any farther use than what should be derived under it during his fourteen years; it would materially retard the progress of science and the useful arts, and give a premium to those, who should be least prompt to communicate their discoveries." *Pennock* v. *Dialogue*, 2 Pet. 1, 18 (1829).

Pennock held that an inventor could not extend the period of patent protection by postponing his application for the patent while exploiting the invention commercially. As we recently explained, "implicit in the Patent Clause itself" is the understanding "that free exploitation of ideas will be the rule, to which the protection of a federal patent is the exception. Moreover, the ultimate goal of the patent system is to bring new designs and technologies into the public domain through disclosure." *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 151 (1989).

The issuance of a patent is appropriately regarded as a *quid pro quo*—the grant of a limited right for the inventor's disclosure and subsequent contribution to the public domain. See, *e. g.*, *Pfaff* v. *Wells Electronics, Inc.*, 525 U. S. 55, 63 (1998) ("[T]he patent system represents a carefully crafted bargain that encourages both the creation and the public disclosure of new and useful advances in technology, in return

for an exclusive monopoly for a limited period of time"). It would be manifestly unfair if, after issuing a patent, the Government as a representative of the public sought to modify the bargain by shortening the term of the patent in order to accelerate public access to the invention. The fairness considerations that underlie the constitutional protections against *ex post facto* laws and laws impairing the obligation of contracts would presumably disable Congress from making such a retroactive change in the public's bargain with an inventor without providing compensation for the taking. Those same considerations should protect members of the public who make plans to exploit an invention as soon as it enters the public domain from a retroactive modification of the bargain that extends the term of the patent monopoly. As I discuss below, the few historical exceptions to this rule do not undermine the constitutional analysis. For quite plainly, the limitations "implicit in the Patent Clause itself," 489 U. S., at 151, adequately explain why neither a State nor Congress may "extend the life of a patent beyond its expiration date," *Sears, Roebuck & Co.*, 376 U. S., at 231.[3]

Neither the purpose of encouraging new inventions nor the overriding interest in advancing progress by adding knowledge to the public domain is served by retroactively increasing the inventor's compensation for a completed invention and frustrating the legitimate expectations of members of the public who want to make use of it in a free

[3] The Court acknowledges that this proposition is "uncontroversial" today, see *ante*, at 202, n. 8, but overlooks the fact that it was highly controversial in the early 1800's. See n. 11, *infra*. The Court assumes that the *Sears* holding rested entirely on the pre-emptive effect of congressional statutes even though the opinion itself, like the opinions in *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1 (1966), and *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141 (1989), also relied on the pre-emptive effect of the constitutional provision. That at least some of the Framers recognized that the Constitution itself imposed a limitation even before Congress acted is demonstrated by Madison's letter, quoted in n. 6, *infra*.

market. Because those twin purposes provide the only avenue for congressional action under the Copyright/Patent Clause of the Constitution, any other action is manifestly unconstitutional.

II

We have recognized that these twin purposes of encouraging new works and adding to the public domain apply to copyrights as well as patents. Thus, with regard to copyrights on motion pictures, we have clearly identified the overriding interest in the "release to the public of the products of [the author's] creative genius." *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 158 (1948).[4] And, as with patents, we have emphasized that the overriding purpose of providing a reward for authors' creative activity is to motivate that activity and "to allow the public access to the products of their genius after the limited period of exclusive control has expired." *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 429 (1984). *Ex post facto* extensions of copyrights result in a gratuitous transfer of wealth from the public to authors, publishers, and their successors in interest. Such retroactive extensions do not even arguably serve either of the purposes of the Copyright/Patent Clause. The reasons why such extensions of the patent monopoly are unconstitutional apply to copyrights as well.

Respondent, however, advances four arguments in support of the constitutionality of such retroactive extensions: (1) The first Copyright Act enacted shortly after the Consti-

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[4] "The copyright law, like the patent statutes, makes reward to the owner a secondary consideration. In *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 127, Chief Justice Hughes spoke as follows respecting the copyright monopoly granted by Congress, 'The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors.' It is said that reward to the author or artist serves to induce release to the public of the products of his creative genius." 334 U. S., at 158.

tution was ratified applied to works that had already been produced; (2) later Congresses have repeatedly authorized extensions of copyrights and patents; (3) such extensions promote the useful arts by giving copyright holders an incentive to preserve and restore certain valuable motion pictures; and (4) as a matter of equity, whenever Congress provides a longer term as an incentive to the creation of new works by authors, it should provide an equivalent reward to the owners of all unexpired copyrights. None of these arguments is persuasive.

III

Congress first enacted legislation under the Copyright/Patent Clause in 1790 when it passed bills creating federal patent and copyright protection. Because the content of that first legislation, the debate that accompanied it, and the differences between the initial versions and the bills that ultimately passed provide strong evidence of early Congresses' understanding of the constitutional limits of the Copyright/Patent Clause, I examine both the initial copyright and patent statutes.

Congress first considered intellectual property statutes in its inaugural session in 1789. The bill debated, House Resolution 10—"a bill to promote the progress of science and useful arts, by securing to authors and inventors the exclusive right to their respective writings and discoveries," 3 Documentary History of First Federal Congress of the United States 94 (L. de Pauw, C. Bickford, & L. Hauptman eds. 1977) (hereinafter Documentary History)—provided both copyright and patent protection for similar terms.[5] The first Congress did not pass H. R. 10, though a similar version was

[5] A copy of this bill specifically identified has not been found, though strong support exists for considering a bill from that session as H. R. 10. See E. Walterscheid, To Promote the Progress of Useful Arts: American Patent Law and Administration, 1798–1836, pp. 87–88 (1998) (hereinafter Walterscheid). This bill is reprinted in 4 Documentary History 513–519.

reintroduced in the second Congress in 1790. After minimal debate, however, the House of Representatives began consideration of two separate bills, one covering patents and the other copyrights. Because, as the majority recognizes, "congressional practice with respect to patents informs our inquiry," *ante*, at 201, I consider the history of both patent and copyright legislation.

The Patent Act

What eventually became the Patent Act of 1790 had its genesis in House Resolution 41, introduced on February 16, 1790. That resolution differed from H. R. 10 in one important respect. Whereas H. R. 10 would have extended patent protection to only those inventions that were "not before known or used," H. R. 41, by contrast, added the phrase "within the United States" to that limitation and expressly authorized patent protection for "any person, who shall after the passing of this act, first import into the United States . . . any . . . device . . . not before used or known in the said States." 6 Documentary History 1626–1632. This change would have authorized patents of importation, providing United States patent protection for inventions already in use elsewhere. This change, however, was short lived and was removed by a floor amendment on March 5, 1789. Walterscheid 125. Though exact records of the floor debate are lost, correspondence from House Members indicate that doubts about the constitutionality of such a provision led to its removal. Representative Thomas Fitzsimmons wrote to a leading industrialist that day stating that the section "'allowing to Importers, was left out, the Constitutional power being Questionable.'" *Id.*, at 126 (quoting Letter from Rep. Thomas Fitzsimmons to Tench Coxe (Mar. 5, 1790)). James Madison himself recognized this constitutional limitation on patents of importation, flatly stating that the constitution "forbids patents for that purpose." 13 Pa-

pers of James Madison 128 (C. Hobson & R. Rutland eds. 1981) (reprinting letter to Tench Coxe (Mar. 28, 1790)).[6]

The final version of the 1790 Patent Act, 1 Stat. 109, did not contain the geographic qualifier and thus did not provide for patents of importation. This statutory omission, coupled with the contemporaneous statements by legislators, provides strong evidence that Congress recognized significant limitations on their constitutional authority under the Copyright/Patent Clause to extend protection to a class of intellectual properties. This recognition of a categorical constitutional limitation is fundamentally at odds with the majority's reading of Article I, § 8, to provide essentially no limit on congressional action under the Clause. If early congressional practice does, indeed, inform our analysis, as it should, then the majority's judicial excision of these constitutional limits cannot be correct.

The Copyright Act

Congress also passed the first Copyright Act, 1 Stat. 124, in 1790. At that time there were a number of maps, charts, and books that had already been printed, some of which were copyrighted under state laws and some of which were arguably entitled to perpetual protection under the common law. The federal statute applied to those works as well as to new works. In some cases the application of the new federal rule reduced the pre-existing protections, and in others it

[6] "Your idea of appropriating a district of territory to the encouragement of imported inventions is new and worthy of consideration. I can not but apprehend however that the clause in the constitution which forbids patents for that purpose will lie equally in the way of your expedient. Congress seem to be tied down to the single mode of encouraging inventions by granting the exclusive benefit of them for a limited time, and therefore to have no more power to give a further encouragement out of a fund of land than a fund of money. This fetter on the National Legislature tho' an unfortunate one, was a deliberate one. The Latitude of authority now wished for was strongly urged and expressly rejected." Madison's description of the Copyright/Patent Clause as a "fetter on the National Legislature" is fully consistent with this Court's opinion in *Graham.*

may have increased the protection.[7] What is significant is that the statute provided a general rule creating new federal rights that supplanted the diverse state rights that previously existed. It did not extend or attach to any of those pre-existing state and common-law rights: "That congress, in passing the act of 1790, did not legislate in reference to existing rights, appears clear." *Wheaton* v. *Peters*, 8 Pet. 591, 661 (1834); see also *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 127 (1932) ("As this Court has repeatedly said, the Congress did not sanction an existing right but created a new one"). Congress set in place a federal structure governing certain types of intellectual property for the new Republic. That Congress exercised its unquestionable constitutional authority to *create* a new federal system securing rights for authors and inventors in 1790 does not provide support for the proposition that Congress can *extend pre-existing* federal protections retroactively.

Respondent places great weight on this first congressional action, arguing that it proves that "Congress thus unquestionably understood that it had authority to apply a new, more favorable copyright term to existing works." Brief for Respondent 12–13. That understanding, however, is not relevant to the question presented by this case—whether "Congress has the power under the Copyright Clause to extend retroactively the term of existing copyrights?" Brief for

[7] Importantly, even this first Act required a *quid pro quo* in order to receive federal copyright protection. In order to receive protection under the Act, the author was first required to register the work: "That no person shall be entitled to the benefit of this act, in cases where any map, chart, book or books, hath or have been already printed and published, unless he shall first deposit, and in all other cases, unless he shall before publication deposit a printed copy of the title of such map, chart, book or books, in the clerk's office of the district court where the author or proprietor shall reside." §3, 1 Stat. 124. This registration requirement in federal district court—a requirement obviously not required under the various state laws protecting written works—further illustrates that the 1790 Act created new rights, rather than extending existing rights.

Petitioners i.[8] Precisely put, the question presented by this case does not even implicate the 1790 Act, for that Act created, rather than extended, copyright protection. That this law applied to works already in existence says nothing about the First Congress' conception of its power to extend this newly created federal right.

Moreover, Members of Congress in 1790 were well aware of the distinction between the creation of new copyright regimes and the extension of existing copyrights. The 1790 Act was patterned, in many ways, after the Statute of Anne enacted in England in 1710. 8 Ann., c. 19; see *Fred Fisher Music Co.* v. *M. Witmark & Sons,* 318 U. S. 643, 647–648 (1943). The English statute, in addition to providing authors with copyrights on new works for a term of 14 years renewable for another 14-year term, also replaced the booksellers' claimed perpetual rights in existing works with a single 21-year term. In 1735, the booksellers proposed an amendment that would have extended the terms of existing copyrights until 1756, but the amendment was defeated. Opponents of the amendment had argued that if the bill were to pass, it would "in Effect be establishing a perpetual Monopoly . . . only to increase the private Gain of the

[8] Respondent's reformulation of the questions presented by this case confuses this basic distinction. We granted certiorari to consider the question: "Did the D. C. Circuit err in holding that Congress has the power under the Copyright Clause to extend retroactively the term of existing copyrights?" Respondent's reformulation of the first question presented—"Whether the 20-year extension of the terms of all unexpired copyrights . . . violates the Copyright Clause of the Constitution insofar as it applies to works in existence when it took effect"—significantly changes the substance of inquiry by changing the focus from the federal statute at issue to irrelevant common-law protections. Brief for Respondent I. Indeed, this reformulation violated this Court's Rule 24(1)(a), which states that "the brief [on the merits] may not raise additional questions or change the substance of the questions already presented in" the petition for certiorari.

Booksellers . . . ."[9] The authors of the federal statute that used the Statute of Anne as a model were familiar with this history. Accordingly, this Court should be especially wary of relying on Congress' creation of a new system to support the proposition that Congress unquestionably understood that it had constitutional authority to extend existing copyrights.

IV

Since the creation of federal patent and copyright protection in 1790, Congress has passed a variety of legislation, both providing specific relief for individual authors and inventors as well as changing the general statutes conferring patent and copyright privileges. Some of the changes did indeed, as the majority describes, extend existing protections retroactively. Other changes, however, did not do so. A more complete and comprehensive look at the history of congressional action under the Copyright/Patent Clause demonstrates that history, in this case, does not provide the "'volume of logic,'" *ante*, at 200, necessary to sustain the Sonny Bono Act's constitutionality.

Congress, aside from changing the process of applying for a patent in the 1793 Patent Act, did not significantly alter the basic patent and copyright systems for the next 40 years. During this time, however, Congress did consider many private bills. Respondent seeks support from "Congress's historical practice of using its Copyright and Patent Clause authority to extend the terms of individual patents and copyrights." Brief for Respondent 13. Carefully read,

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[9] "*A* LETTER *to a* MEMBER *of Parliament concerning the Bill now depending . . . for making more effectual an Act in the 8th Year of the Reign of Queen Anne, entituled,* An Act for the Encouragement of Learning, by . . . Vesting the Copies of Printed Books in the Authors or Purchasers." Document reproduced in Goldsmiths'—Kress Library of Economic Literature, Segment I: Printed Books Through 1800, Microfilm No. 7300 (reel 460).

however, these private bills do not support respondent's historical gloss, but rather significantly undermine the historical claim.

The first example relied upon by respondent, the extension of Oliver Evans' patent in 1808, ch. 13, 6 Stat. 70, demonstrates the pitfalls of relying on an incomplete historical analysis. Evans, an inventor who had developed several improvements in milling flour, received the third federal patent on January 7, 1791. See Federico, Patent Trials of Oliver Evans, 27 J. Pat. Off. Soc. 586, 590 (1945). Under the 14-year term provided by the 1790 Patent Act, this patent was to expire on January 7, 1805. Claiming that 14 years had not provided him a sufficient time to realize income from his invention and that the net profits were spent developing improvements on the steam engine, Evans first sought an extension of his patent in December 1804. *Id.*, at 598; 14 Annals of Cong. 1002 (1805). Unsuccessful in 1804, he tried again in 1805, and yet again in 1806, to persuade Congress to pass his private bill. Undaunted, Evans tried one last time to revive his expired patent after receiving an adverse judgment in an infringement action. See *Evans* v. *Chambers*, 8 F. Cas. 837 (No. 4,555) (CC Pa. 1807). This time, his effort at private legislation was successful, and Congress passed a bill extending his patent for 14 years. See An Act for the relief of Oliver Evans, 6 Stat. 70. This legislation, passed January 21, 1808, restored a patent monopoly for an invention that had been in the public domain for over four years. As such, this Act unquestionably exceeded Congress' authority under the Copyright/Patent Clause: "The Congress in the exercise of the patent power may not overreach the restraints imposed by the stated constitutional purpose. . . . *Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available.*" *Graham*, 383 U. S., at 5–6 (emphasis added).

This extension of patent protection to an expired patent was not an isolated incident. Congress passed private bills either directly extending patents or allowing otherwise untimely applicants to apply for patent extensions for approximately 75 patents between 1790 and 1875. Of these 75 patents, at least 56 had already fallen into the public domain.[10] The fact that this repeated practice was patently unconstitutional completely undermines the majority's reliance on this history as "significant." *Ante,* at 201.

Copyright legislation has a similar history. The federal Copyright Act was first amended in 1831. That amendment, like later amendments, not only authorized a longer term for new works, but also extended the terms of unexpired copyrights. Respondent argues that that historical practice effectively establishes the constitutionality of retroactive extensions of unexpired copyrights. Of course, the practice buttressess the presumption of validity that attaches to every Act of Congress. But, as our decision in *INS* v. *Chadha,* 462 U. S. 919 (1983), demonstrates, the fact that Congress has repeatedly acted on a mistaken interpretation of the Constitution does not qualify our duty to invalidate an unconstitutional practice when it is finally challenged in an appropriate case. As Justice White pointed out in his dissent in *Chadha,* that case sounded the "death knell for nearly 200 other statutory provisions" in which Congress had exercised a "'legislative veto.'" *Id.,* at 967. Regardless of the effect of unconstitutional enactments of Congress, the scope of "'the constitutional power of Congress . . . is ultimately a

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[10] See, *e. g.,* ch. 74, 6 Stat. 458 (patent had expired for three months); ch. 113, 6 Stat. 467 (patent had expired for over two years); ch. 213, 6 Stat. 589 (patent had expired for five months); ch. 158, 9 Stat. 734 (patent had expired for over two years); ch. 72, 14 Stat. 621 (patent had expired nearly four years); ch. 175, 15 Stat. 461 (patent had expired for over two years); ch. 15, 16 Stat. 613 (patent had expired for six years); ch. 317, 16 Stat. 659 (patent had expired for nearly four years); ch. 439, 17 Stat. 689 (patent had expired for over two years).

judicial rather than a legislative question, and can be settled finally only by this Court.'" *United States* v. *Morrison*, 529 U. S. 598, 614 (2000) (quoting *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U. S. 241, 273 (1964) (Black, J., concurring)). For, as this Court has long recognized, "[i]t is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence." *Walz* v. *Tax Comm'n of City of New York*, 397 U. S. 664, 678 (1970).

It would be particularly unwise to attach constitutional significance to the 1831 amendment because of the very different legal landscape against which it was enacted. Congress based its authority to pass the amendment on grounds shortly thereafter declared improper by the Court. The Judiciary Committee Report prepared for the House of Representatives asserted that "an author has an exclusive and perpetual right, in preference to any other, to the fruits of his labor." 7 Cong. Deb., App., p. cxx (1831). The floor debate echoed this same sentiment. See, *e. g.*, *id.*, at 424 (statement of Mr. Verplanck (rejecting the idea that copyright involved "an implied contract existing between an author and the public" for "[t]here was no contract; the work of an author was the result of his own labor" and copyright was "merely a legal provision for the protection of a natural right")). This sweat-of-the-brow view of copyright, however, was emphatically rejected by this Court in 1834 in *Wheaton* v. *Peters*, 8 Pet., at 661 ("Congress, then, by this act, instead of sanctioning an existing right, as contended for, created it"). No presumption of validity should attach to a statutory enactment that relied on a shortly thereafter discredited interpretation of the basis for congressional power.[11]

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[11] In the period before our decision in *Wheaton*, the pre-emptive effect of the Patent/Copyright Clause was also a matter of serious debate within the legal profession. Indeed, in their argument in this Court in *Gibbons* v. *Ogden*, 9 Wheat., at 44–61, 141–157, the defenders of New York's grant of a 30-year monopoly on the passenger trade between New Jersey and

In 1861, Congress amended the term of patents, from a 14-year term plus opportunity for 7-year extension to a flat 17 years with no extension permitted. Act of Mar. 2, 1861, ch. 88, § 16, 12 Stat. 249. This change was not retroactive, but rather only applied to "all patents hereafter granted." *Ibid.* To be sure, Congress, at many times in its history, has retroactively extended the terms of existing copyrights and patents. This history, however, reveals a much more heterogeneous practice than respondent contends. It is replete with actions that were unquestionably unconstitutional. Though relevant, the history is not dispositive of the constitutionality of the Sonny Bono Act.

The general presumption that historic practice illuminates the constitutionality of congressional action is not controlling in this case. That presumption is strongest when the earliest acts of Congress are considered, for the overlap of identity between those who created the Constitution and those who first constituted Congress provides "contemporaneous and weighty evidence" of the Constitution's "true meaning." *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297 (1888). But that strong presumption does not attach to congressional action in 1831, because no member of the 1831 Congress had been a delegate to the framing convention 44 years earlier.

Moreover, judicial opinions relied upon by the majority interpreting early legislative enactments have either been implicitly overruled or do not support the proposition claimed. *Graham* flatly contradicts the cases relied on by the majority and respondent for support that "renewed or extended terms

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Manhattan argued that the Clause actually should be interpreted as confirming the State's authority to grant monopoly privileges that supplemented any federal grant. That argument is, of course, flatly inconsistent with our recent unanimous decision in *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141 (1989). Although Attorney General Wirt had urged the Court to endorse our present interpretation of the Clause, its implicit limitations were unsettled when the 1831 Copyright Act was passed.

were upheld in the early days." *Ante*, at 202.[12] *Evans* v. *Jordan*, 8 F. Cas. 872, 874 (No. 4,564) (CC Va. 1813) (Marshall, J.); *Evans* v. *Robinson*, 8 F. Cas. 886, 888 (No. 4,571) (CC Md. 1813); and *Blanchard* v. *Sprague*, 3 F. Cas. 648, 650 (No. 1,518) (CC Mass. 1839) (Story, J.), all held that private bills passed by Congress extending previously expired patents were valid. *Evans* v. *Jordan* and *Evans* v. *Robinson* both considered Oliver Evans' private bill discussed above while *Blanchard* involved ch. 213, 6 Stat. 589, which extended Thomas Blanchard's patent after it had been in the public domain for five months. Irrespective of what circuit courts held "in the early days," *ante*, at 202, such holdings have been implicitly overruled by *Graham* and, therefore, provide no support for respondent in the present constitutional inquiry.

The majority's reliance on the other patent case it cites is similarly misplaced. Contrary to the suggestion in the Court's opinion, *McClurg* v. *Kingsland*, 1 How. 202 (1843), did not involve the "legislative expansion" of an existing patent. *Ante*, at 202. The question in that case was whether the former employer of the inventor, one James Harley, could be held liable as an infringer for continuing to use the process that Harley had invented in 1834 when he was in its employ. The Court first held that the employer's use of the process before the patent issued was not a public

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[12] It is true, as the majority points out, *ante*, at 202, n. 7, that *Graham* did not expressly overrule those earlier cases because *Graham* did not address the issue whether Congress could revive expired patents. That observation does not even arguably justify reliance on a set of old circuit court cases to support a proposition that is inconsistent with our present understanding of the limits imposed by the Copyright/Patent Clause. After all, a unanimous Court recently endorsed the precise analysis that the majority now seeks to characterize as "wishful thinking." *Ante*, at 202, n. 7. See *Bonito Boats*, 489 U. S., at 146 ("Congress may not create patent monopolies of unlimited duration, nor may it 'authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available' " (quoting *Graham*, 383 U. S., at 6)).

use that would invalidate the patent, even if it might have had that effect prior to the amendment of the patent statute in 1836. 1 How., at 206–208. The Court then disposed of the case on the ground that a statute enacted in 1839 protected the alleged infringer's right to continue to use the process after the patent issued. *Id.*, at 209–211. Our opinion said nothing about the power of Congress to extend the life of an issued patent. It did note that Congress has plenary power to legislate on the subject of patents provided "that they do not take away the rights of property in existing patents." *Id.*, at 206. The fact that Congress cannot change the bargain between the public and the patentee in a way that disadvantages the patentee is, of course, fully consistent with the view that it cannot enlarge the patent monopoly to the detriment of the public after a patent has issued.

The history of retroactive extensions of existing and expired copyrights and patents, though relevant, is not conclusive of the constitutionality of the Sonny Bono Act. The fact that the Court has not previously passed upon the constitutionality of retroactive copyright extensions does not insulate the present extension from constitutional challenge.

V

Respondent also argues that the Act promotes the useful arts by providing incentives to restore old movies. For at least three reasons, the interest in preserving perishable copies of old copyrighted films does not justify a wholesale extension of existing copyrights. First, such restoration and preservation will not even arguably promote any new works by authors or inventors. And, of course, any original expression in the restoration and preservation of movies will receive new copyright protection.[13] Second, however strong

[13] Indeed, the Lodging of the Motion Picture Association of America, Inc., as *Amicus Curiae* illustrates the significant creative work involved in releasing these classics. The Casablanca Digital Video Disc (DVD) con-

the justification for preserving such works may be, that justification applies equally to works whose copyrights have already expired. Yet no one seriously contends that the Copyright/Patent Clause would authorize the grant of monopoly privileges for works already in the public domain solely to encourage their restoration. Finally, even if this concern with aging movies would permit congressional protection, the remedy offered—a blanket extension of all copyrights—simply bears no relationship to the alleged harm.

VI

Finally, respondent relies on concerns of equity to justify the retroactive extension. If Congress concludes that a longer period of exclusivity is necessary in order to provide an adequate incentive to authors to produce new works, respondent seems to believe that simple fairness requires that the same lengthened period be provided to authors whose works have already been completed and copyrighted. This is a classic non sequitur. The reason for increasing the inducement to create something new simply does not apply to an already-created work. To the contrary, the equity argument actually provides strong support for petitioners. Members of the public were entitled to rely on a promised access to copyrighted or patented works at the expiration of the terms specified when the exclusive privileges were granted. On the other hand, authors will receive the full benefit of the exclusive terms that were promised as an inducement to their creativity, and have no equitable claim to increased compensation for doing nothing more.

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tains a "documentary *You Must Remember This*, hosted by Lauren Bacall and featuring recently unearthed outtakes" and an "[a]ll-new introduction by Lauren Bacall." Disc cover text. Similarly, the Citizen Kane DVD includes "[t]wo feature-length audio commentaries: one by film critic Roger Ebert and the other by director/Welles biographer Peter Bogdanovich" and a "gallery of storyboards, rare photos, alternate ad campaigns, studio correspondence, call sheets and other memorabilia" in addition to a 2-hour documentary. Disc cover text.

One must indulge in two untenable assumptions to find support in the equitable argument offered by respondent—that the public interest in free access to copyrighted works is entirely worthless and that authors, as a class, should receive a windfall solely based on completed creative activity. Indeed, Congress has apparently indulged in those assumptions for under the series of extensions to copyrights, with the exception of works which required renewal and which were not renewed, no copyrighted work created in the past 80 years has entered the public domain or will do so until 2019. But as our cases repeatedly and consistently emphasize, ultimate public access is the overriding purpose of the constitutional provision. See, *e. g.*, *Sony Corp.*, 464 U. S., at 429. *Ex post facto* extensions of existing copyrights, unsupported by any consideration of the public interest, frustrate the central purpose of the Clause.

VII

The express grant of a perpetual copyright would unquestionably violate the textual requirement that the authors' exclusive rights be only "for limited Times." Whether the extraordinary length of the grants authorized by the 1998 Act are invalid because they are the functional equivalent of perpetual copyrights is a question that need not be answered in this case because the question presented by the certiorari petition merely challenges Congress' power to extend retroactively the terms of existing copyrights. Accordingly, there is no need to determine whether the deference that is normally given to congressional policy judgments may save from judicial review its decision respecting the appropriate length of the term.[14] It is important to note, however, that

[14] Similarly, the validity of earlier retroactive extensions of copyright protection is not at issue in this case. To decide the question now presented, we need not consider whether the reliance and expectation interests that have been established by prior extensions passed years ago would alter the result. Cf. *Heckler* v. *Mathews*, 465 U. S. 728, 746 (1984)

a categorical rule prohibiting retroactive extensions would effectively preclude perpetual copyrights. More importantly, as the House of Lords recognized when it refused to amend the Statute of Anne in 1735, unless the Clause is construed to embody such a categorical rule, Congress may extend existing monopoly privileges *ad infinitum* under the majority's analysis.

By failing to protect the public interest in free access to the products of inventive and artistic genius—indeed, by virtually ignoring the central purpose of the Copyright/Patent Clause—the Court has quitclaimed to Congress its principal responsibility in this area of the law. Fairly read, the Court has stated that Congress' actions under the Copyright/Patent Clause are, for all intents and purposes, judicially unreviewable. That result cannot be squared with the basic tenets of our constitutional structure. It is not hyperbole to recall the trenchant words of Chief Justice John Marshall: "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). We should discharge that responsibility as we did in *Chadha*.

I respectfully dissent.

JUSTICE BREYER, dissenting.

The Constitution's Copyright Clause grants Congress the power to "*promote* the *Progress* of Science . . . by securing for *limited* Times to *Authors* . . . the exclusive Right to their respective Writings." Art. I, §8, cl. 8 (emphasis added). The statute before us, the 1998 Sonny Bono Copyright Term Extension Act, extends the term of most existing copyrights

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("We have recognized, in a number of contexts, the legitimacy of protecting reasonable reliance on prior law even when that requires allowing an unconstitutional statute to remain in effect for a limited period of time"). Those interests are not at issue now, because the act under review in this case was passed only four years ago and has been under challenge in court since shortly after its enactment.

to 95 years and that of many new copyrights to 70 years after the author's death. The economic effect of this 20-year extension—the longest blanket extension since the Nation's founding—is to make the copyright term not limited, but virtually perpetual. Its primary legal effect is to grant the extended term not to authors, but to their heirs, estates, or corporate successors. And most importantly, its practical effect is not to promote, but to inhibit, the progress of "Science"—by which word the Framers meant learning or knowledge, E. Walterscheid, The Nature of the Intellectual Property Clause: A Study in Historical Perspective 125–126 (2002).

The majority believes these conclusions rest upon practical judgments that at most suggest the statute is unwise, not that it is unconstitutional. Legal distinctions, however, are often matters of degree. *Panhandle Oil Co.* v. *Mississippi ex rel. Knox*, 277 U. S. 218, 223 (1928) (Holmes, J., dissenting), overruled in part by *Alabama* v. *King & Boozer*, 314 U. S. 1, 8–9 (1941); accord, *Walz* v. *Tax Comm'n of City of New York*, 397 U. S. 664, 678–679 (1970). And in this case the failings of degree are so serious that they amount to failings of constitutional kind. Although the Copyright Clause grants broad legislative power to Congress, that grant has limits. And in my view this statute falls outside them.

I

The "monopoly privileges" that the Copyright Clause confers "are neither unlimited nor primarily designed to provide a special private benefit." *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 429 (1984); cf. *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1, 5 (1966). This Court has made clear that the Clause's limitations are judicially enforceable. *E. g., Trade-Mark Cases*, 100 U. S. 82, 93–94 (1879). And, in assessing this statute for that purpose, I would take into account the fact that the Constitution is a single document, that it contains both a

Copyright Clause and a First Amendment, and that the two are related.

The Copyright Clause and the First Amendment seek related objectives—the creation and dissemination of information. When working in tandem, these provisions mutually reinforce each other, the first serving as an "engine of free expression," *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 558 (1985), the second assuring that government throws up no obstacle to its dissemination. At the same time, a particular statute that exceeds proper Copyright Clause bounds may set Clause and Amendment at cross-purposes, thereby depriving the public of the speech-related benefits that the Founders, through both, have promised.

Consequently, I would review plausible claims that a copyright statute seriously, and unjustifiably, restricts the dissemination of speech somewhat more carefully than reference to this Court's traditional Copyright Clause jurisprudence might suggest, cf. *ante*, at 204–205, and n. 10. There is no need in this case to characterize that review as a search for "'congruence and proportionality,'" *ante*, at 218, or as some other variation of what this Court has called "intermediate scrutiny," *e. g.*, *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522, 536–537 (1987) (applying intermediate scrutiny to a variant of normal trademark protection). Cf. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 402–403 (2000) (BREYER, J., concurring) (test of proportionality between burdens and benefits "where a law significantly implicates competing constitutionally protected interests"). Rather, it is necessary only to recognize that this statute involves not pure economic regulation, but regulation of expression, and what may count as rational where economic regulation is at issue is not necessarily rational where we focus on expression—in a Nation constitutionally dedicated to the free dissemination of speech, information, learning, and culture. In this sense

only, and where line-drawing among constitutional interests is at issue, I would look harder than does the majority at the statute's rationality—though less hard than precedent might justify, see, *e. g.*, *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 446–450 (1985); *Plyler* v. *Doe*, 457 U. S. 202, 223–224 (1982); *Department of Agriculture* v. *Moreno*, 413 U. S. 528, 534–538 (1973).

Thus, I would find that the statute lacks the constitutionally necessary rational support (1) if the significant benefits that it bestows are private, not public; (2) if it threatens seriously to undermine the expressive values that the Copyright Clause embodies; and (3) if it cannot find justification in any significant Clause-related objective. Where, after examination of the statute, it becomes difficult, if not impossible, even to dispute these characterizations, Congress' "choice is clearly wrong." *Helvering* v. *Davis*, 301 U. S. 619, 640 (1937).

II

A

Because we must examine the relevant statutory effects in light of the Copyright Clause's own purposes, we should begin by reviewing the basic objectives of that Clause. The Clause authorizes a "tax on readers for the purpose of giving a bounty to writers." 56 Parl. Deb. (3d Ser.) (1841) 341, 350 (Lord Macaulay). Why? What constitutional purposes does the "bounty" serve?

The Constitution itself describes the basic Clause objective as one of "promot[ing] the Progress of Science," *i. e.*, knowledge and learning. The Clause exists not to "provide a special private benefit," *Sony*, *supra*, at 429, but "to stimulate artistic creativity for the general public good," *Twentieth Century Music Corp.* v. *Aiken*, 422 U. S. 151, 156 (1975). It does so by "motivat[ing] the creative activity of authors" through "the provision of a special reward." *Sony*, *supra*, at 429. The "reward" is a means, not an end. And that is

why the copyright term is limited. It is limited so that its beneficiaries—the public—"will not be permanently deprived of the fruits of an artist's labors." *Stewart* v. *Abend*, 495 U. S. 207, 228 (1990).

That is how the Court previously has described the Clause's objectives. See also *Mazer* v. *Stein*, 347 U. S. 201, 219 (1954) ("[C]opyright law . . . makes reward to the owner a secondary consideration" (internal quotation marks omitted)); *Sony*, 464 U. S., at 429 ("[L]imited grant" is "intended . . . to allow the public access to the products of [authors'] genius after the limited period of exclusive control has expired"); *Harper & Row*, *supra*, at 545 (Copyright is "intended to increase and not to impede the harvest of knowledge"). But cf. *ante*, at 212, n. 18. And, in doing so, the Court simply has reiterated the views of the Founders.

Madison, like Jefferson and others in the founding generation, warned against the dangers of monopolies. See, *e. g.*, Monopolies. Perpetuities. Corporations. Ecclesiastical Endowments. in J. Madison, Writings 756 (J. Rakove ed. 1999) (hereinafter Madison on Monopolies); Letter from Thomas Jefferson to James Madison (July 31, 1788), in 13 Papers of Thomas Jefferson 443 (J. Boyd ed. 1956) (hereinafter Papers of Thomas Jefferson) (arguing against even copyright monopolies); 2 Annals of Cong. 1917 (1791) (statement of Rep. Jackson in the First Congress, Feb. 1791) ("What was it drove our forefathers to this country? Was it not the ecclesiastical corporations and perpetual monopolies of England and Scotland?"). Madison noted that the Constitution had "limited them to two cases, the authors of Books, and of useful inventions." Madison on Monopolies 756. He thought that in those two cases monopoly is justified because it amounts to "compensation for" an actual community "benefit" and because the monopoly is "temporary"—the term originally being 14 years (once renewable). *Ibid.* Madison concluded that "under that limitation a sufficient recompence and encouragement may be given." *Ibid.* But

he warned in general that monopolies must be "guarded with strictness agst abuse." *Ibid.*

Many Members of the Legislative Branch have expressed themselves similarly. Those who wrote the House Report on the landmark Copyright Act of 1909, for example, said that copyright was not designed "primarily" to "benefit" the "author" or "any particular class of citizens, however worthy." H. R. Rep. No. 2222, 60th Cong., 2d Sess., 6–7 (1909). Rather, under the Constitution, copyright was designed "primarily for the benefit of the public," for "the benefit of the great body of people, in that it will stimulate writing and invention." *Id.*, at 7. And were a copyright statute not "believed, in fact, to accomplish" the basic constitutional objective of advancing learning, that statute "would be beyond the power of Congress" to enact. *Id.*, at 6–7. Similarly, those who wrote the House Report on legislation that implemented the Berne Convention for the Protection of Literary and Artistic Works said that "[t]he constitutional purpose of copyright is to facilitate the flow of ideas in the interest of learning." H. R. Rep. No. 100–609, p. 22 (1988) (internal quotation marks omitted). They added:

> "Under the U. S. Constitution, the primary objective of copyright law is not to reward the author, but rather to secure for the public the benefits derived from the authors' labors. By giving authors an incentive to create, the public benefits in two ways: when the original expression is created and . . . when the limited term . . . expires and the creation is added to the public domain." *Id.*, at 17.

For present purposes, then, we should take the following as well established: that copyright statutes must serve public, not private, ends; that they must seek "to promote the Progress" of knowledge and learning; and that they must do so both by creating incentives for authors to produce and by removing the related restrictions on dissemination after

expiration of a copyright's "limited Tim[e]"—a time that (like "a *limited* monarch") is "restrain[ed]" and "circumscribe[d]," "not [left] at large," 2 S. Johnson, A Dictionary of the English Language 1151 (4th rev. ed. 1773). I would examine the statute's effects in light of these well-established constitutional purposes.

B

This statute, like virtually every copyright statute, imposes upon the public certain expression-related costs in the form of (1) royalties that may be higher than necessary to evoke creation of the relevant work, and (2) a requirement that one seeking to reproduce a copyrighted work must obtain the copyright holder's permission. The first of these costs translates into higher prices that will potentially restrict a work's dissemination. The second means search costs that themselves may prevent reproduction even where the author has no objection. Although these costs are, in a sense, inevitable concomitants of copyright protection, there are special reasons for thinking them especially serious here.

First, the present statute primarily benefits the holders of existing copyrights, *i. e.,* copyrights on works already created. And a Congressional Research Service (CRS) study prepared for Congress indicates that the added royalty-related sum that the law will transfer to existing copyright holders is large. E. Rappaport, CRS Report for Congress, Copyright Term Extension: Estimating the Economic Values (1998) (hereinafter CRS Report). In conjunction with official figures on copyright renewals, the CRS Report indicates that only about 2% of copyrights between 55 and 75 years old retain commercial value—*i. e.,* still generate royalties after that time. Brief for Petitioners 7 (estimate, uncontested by respondent, based on data from the CRS, Census Bureau, and Library of Congress). But books, songs, and movies of that vintage still earn about $400 million per year in royalties. CRS Report 8, 12, 15. Hence, (despite declin-

ing consumer interest in any given work over time) one might conservatively estimate that 20 extra years of copyright protection will mean the transfer of several billion extra royalty dollars to holders of existing copyrights—copyrights that, together, already will have earned many billions of dollars in royalty "reward." See *id.*, at 16.

The extra royalty payments will not come from thin air. Rather, they ultimately come from those who wish to read or see or hear those classic books or films or recordings that have survived. Even the $500,000 that United Airlines has had to pay for the right to play George Gershwin's 1924 classic Rhapsody in Blue represents a cost of doing business, potentially reflected in the ticket prices of those who fly. See Ganzel, Copyright or Copywrong? 39 Training 36, 42 (Dec. 2002). Further, the likely amounts of extra royalty payments are large enough to suggest that unnecessarily high prices will unnecessarily restrict distribution of classic works (or lead to disobedience of the law)—not just in theory but in practice. Cf. CRS Report 3 ("[N]ew, cheaper editions can be expected when works come out of copyright"); Brief for College Art Association et al. as *Amici Curiae* 24 (One year after expiration of copyright on Willa Cather's My Antonia, seven new editions appeared at prices ranging from $2 to $24); Ganzel, *supra*, at 40–41, 44 (describing later abandoned plans to charge individual Girl Scout camps $257 to $1,439 annually for a license to sing songs such as God Bless America around a campfire).

A second, equally important, cause for concern arises out of the fact that copyright extension imposes a "permissions" requirement—not only upon potential users of "classic" works that still retain commercial value, but also upon potential users of *any other work* still in copyright. Again using CRS estimates, one can estimate that, by 2018, the number of such works 75 years of age or older will be about 350,000. See Brief for Petitioners 7. Because the Copyright Act of 1976 abolished the requirement that an owner must renew a

copyright, such still-in-copyright works (of little or no commercial value) will eventually number in the millions. See Pub. L. 94–553, §§ 302–304, 90 Stat. 2572–2576; U. S. Dept. of Commerce, Bureau of Census, Statistical History of the United States: From Colonial Times to the Present 956 (1976) (hereinafter Statistical History).

The potential users of such works include not only movie buffs and aging jazz fans, but also historians, scholars, teachers, writers, artists, database operators, and researchers of all kinds—those who want to make the past accessible for their own use or for that of others. The permissions requirement can inhibit their ability to accomplish that task. Indeed, in an age where computer-accessible databases promise to facilitate research and learning, the permissions requirement can stand as a significant obstacle to realization of that technological hope.

The reason is that the permissions requirement can inhibit or prevent the use of old works (particularly those without commercial value): (1) because it may prove expensive to track down or to contract with the copyright holder, (2) because the holder may prove impossible to find, or (3) because the holder when found may deny permission either outright or through misinformed efforts to bargain. The CRS, for example, has found that the cost of seeking permission "can be prohibitive." CRS Report 4. And *amici*, along with petitioners, provide examples of the kinds of significant harm at issue.

Thus, the American Association of Law Libraries points out that the clearance process associated with creating an electronic archive, Documenting the American South, "consumed approximately a dozen man-hours" *per work*. Brief for American Association of Law Libraries et al. as *Amici Curiae* 20. The College Art Association says that the costs of obtaining permission for use of single images, short excerpts, and other short works can become prohibitively high; it describes the abandonment of efforts to include, *e. g.*, cam-

paign songs, film excerpts, and documents exposing "horrors of the chain gang" in historical works or archives; and it points to examples in which copyright holders in effect have used their control of copyright to try to control the content of historical or cultural works. Brief for College Art Association et al. as *Amici Curiae* 7–13. The National Writers Union provides similar examples. Brief for National Writers Union et al. as *Amici Curiae* 25–27. Petitioners point to music fees that may prevent youth or community orchestras, or church choirs, from performing early 20th-century music. Brief for Petitioners 3–5; see also App. 16–17 (Copyright extension caused abandonment of plans to sell sheet music of Maurice Ravel's Alborada Del Gracioso). *Amici* for petitioners describe how electronic databases tend to avoid adding to their collections works whose copyright holders may prove difficult to contact, see, *e. g.*, Arms, Getting the Picture: Observations from the Library of Congress on Providing Online Access to Pictorial Images, 48 Library Trends 379, 405 (1999) (describing how this tendency applies to the Library of Congress' own digital archives).

As I have said, to some extent costs of this kind accompany any copyright law, regardless of the length of the copyright term. But to extend that term, preventing works from the 1920's and 1930's from falling into the public domain, will dramatically increase the size of the costs just as—perversely—the likely benefits from protection diminish. See *infra*, at 254–256. The older the work, the less likely it retains commercial value, and the harder it will likely prove to find the current copyright holder. The older the work, the more likely it will prove useful to the historian, artist, or teacher. The older the work, the less likely it is that a sense of authors' rights can justify a copyright holder's decision not to permit reproduction, for the more likely it is that the copyright holder making the decision is not the work's creator, but, say, a corporation or a great-grandchild whom the work's creator never knew. Similarly, the costs of obtaining

permission, now perhaps ranging in the millions of dollars, will multiply as the number of holders of affected copyrights increases from several hundred thousand to several million. See *supra*, at 249–250. The costs to the users of nonprofit databases, now numbering in the low millions, will multiply as the use of those computer-assisted databases becomes more prevalent. See, *e. g.*, Brief for Internet Archive et al. as *Amici Curiae* 2, 21, and n. 37 (describing nonprofit Project Gutenberg). And the qualitative costs to education, learning, and research will multiply as our children become ever more dependent for the content of their knowledge upon computer-accessible databases—thereby condemning that which is not so accessible, say, the cultural content of early 20th-century history, to a kind of intellectual purgatory from which it will not easily emerge.

The majority finds my description of these permissions-related harms overstated in light of Congress' inclusion of a statutory exemption, which, during the last 20 years of a copyright term, exempts "facsimile or digital" reproduction by a "library or archives" "for purposes of preservation, scholarship, or research," 17 U. S. C. § 108(h). *Ante*, at 220. This exemption, however, applies only where the copy is made for the special listed purposes; it simply permits a library (not any other subsequent users) to make "a copy" for those purposes; it covers only "published" works not "subject to normal commercial exploitation" and not obtainable, apparently not even as a used copy, at a "reasonable price"; and it insists that the library assure itself through "reasonable investigation" that these conditions have been met. § 108(h). What database proprietor can rely on so limited an exemption—particularly when the phrase "reasonable investigation" is so open-ended and particularly if the database has commercial, as well as noncommercial, aspects?

The majority also invokes the "fair use" exception, and it notes that copyright law itself is restricted to protection of a work's expression, not its substantive content. *Ante*, at

219–220. Neither the exception nor the restriction, however, would necessarily help those who wish to obtain from electronic databases material that is not there—say, teachers wishing their students to see albums of Depression Era photographs, to read the recorded words of those who actually lived under slavery, or to contrast, say, Gary Cooper's heroic portrayal of Sergeant York with filmed reality from the battlefield of Verdun. Such harm, and more, see *supra*, at 248–252, will occur despite the 1998 Act's exemptions and despite the other "First Amendment safeguards" in which the majority places its trust, *ante*, at 219–220.

I should add that the Motion Picture Association of America also finds my concerns overstated, at least with respect to films, because the extension will sometimes make it profitable to reissue old films, saving them from extinction. Brief for Motion Picture Association of America, Inc., as *Amicus Curiae* 14–24. Other film preservationists note, however, that only a small minority of the many films, particularly silent films, from the 1920's and 1930's have been preserved. 1 Report of the Librarian of Congress, Film Preservation 1993, pp. 3–4 (Half of all pre-1950 feature films and more than 80% of all such pre-1929 films have already been lost); cf. Brief for Hal Roach Studios et al. as *Amici Curiae* 18 (Out of 1,200 Twenties Era silent films still under copyright, 63 are now available on digital video disc). They seek to preserve the remainder. See, *e. g.*, Brief for Internet Archive et al. as *Amici Curiae* 22 (Nonprofit database digitized 1,001 public-domain films, releasing them online without charge); 1 Film Preservation 1993, *supra*, at 23 (reporting well over 200,000 titles held in public archives). And they tell us that copyright extension will impede preservation by forbidding the reproduction of films within their own or within other public collections. Brief for Hal Roach Studios et al. as *Amici Curiae* 10–21; see also Brief for Internet Archive et al. as *Amici Curiae* 16–29; Brief for American Association of Law Libraries et al. as *Amici Curiae* 26–27.

Because this subsection concerns only costs, not countervailing benefits, I shall simply note here that, with respect to films as with respect to other works, extension does cause substantial harm to efforts to preserve and to disseminate works that were created long ago. And I shall turn to the second half of the equation: Could Congress reasonably have found that the extension's toll-related and permissions-related harms are justified by extension's countervailing preservationist incentives or in other ways?

C

What copyright-related benefits might justify the statute's extension of copyright protection? First, no one could reasonably conclude that copyright's traditional economic rationale applies here. The extension will not act as an economic spur encouraging authors to create new works. See *Mazer*, 347 U. S., at 219 (The "economic philosophy" of the Copyright Clause is to "advance public welfare" by "encourag[ing] individual effort" through "personal gain"); see also *ante*, at 212, n. 18 ("[C]opyright law serves public ends by providing individuals with an incentive to pursue private ones"). No potential author can reasonably believe that he has more than a tiny chance of writing a classic that will survive commercially long enough for the copyright extension to matter. After all, if, after 55 to 75 years, only 2% of all copyrights retain commercial value, the percentage surviving after 75 years or more (a typical pre-extension copyright term)—must be far smaller. See s*upra*, at 248; CRS Report 7 (estimating that, even after copyright renewal, about 3.8% of copyrighted books go out of print each year). And any remaining monetary incentive is diminished dramatically by the fact that the relevant royalties will not arrive until 75 years or more into the future, when, not the author, but distant heirs, or shareholders in a successor corporation, will receive them. Using assumptions about the time value of money provided us by a group of economists (including five

Nobel prize winners), Brief for George A. Akerlof et al. as *Amici Curiae* 5–7, it seems fair to say that, for example, a 1% likelihood of earning $100 annually for 20 years, starting *75 years into the future*, is worth less than seven cents today. See *id.*, App. 3a; see also CRS Report 5. See generally Appendix, Part A, *infra.*

What potential Shakespeare, Wharton, or Hemingway would be moved by such a sum? What monetarily motivated Melville would not realize that he could do better for his grandchildren by putting a few dollars into an interest-bearing bank account? The Court itself finds no evidence to the contrary. It refers to testimony before Congress (1) that the copyright system's incentives encourage creation, and (2) (referring to Noah Webster) that income earned from one work can help support an artist who "'continue[s] to create.'" *Ante*, at 208, n. 15. But the first of these amounts to no more than a set of undeniably true propositions about the value of incentives *in general.* And the applicability of the second to *this* Act is mysterious. How will extension help today's Noah Webster create new works 50 years after his death? Or is that hypothetical Webster supposed to support himself with the extension's present discounted value, *i. e.*, a few pennies? Or (to change the metaphor) is the argument that Dumas *fils* would have written more books had Dumas *père*'s Three Musketeers earned more royalties?

Regardless, even if this cited testimony were meant more specifically to tell Congress that somehow, somewhere, some potential author might be moved by the thought of great-grandchildren receiving copyright royalties a century hence, so might some potential author also be moved by the thought of royalties being paid for two centuries, five centuries, 1,000 years, "'til the End of Time." And from a rational economic perspective the time difference among these periods *makes no real difference.* The present extension will produce a copyright period of protection that, even under conservative

assumptions, is worth more than *99.8%* of protection *in perpetuity* (more than *99.99%* for a songwriter like Irving Berlin and a song like Alexander's Ragtime Band). See Appendix, Part A, *infra.* The lack of a practically meaningful distinction from an author's *ex ante* perspective between (a) the statute's extended terms and (b) an infinite term makes this latest extension difficult to square with the Constitution's insistence on "limited Times." Cf. Tr. of Oral Arg. 34 (Solicitor General's related concession).

I am not certain why the Court considers it relevant in this respect that "[n]othing . . . warrants construction of the [1998 Act's] 20-year term extension as a congressional attempt to evade or override the 'limited Times' constraint." *Ante,* at 209. Of course Congress did not intend to act unconstitutionally. But it may have sought to test the Constitution's limits. After all, the statute was named after a Member of Congress, who, the legislative history records, "wanted the term of copyright protection to last forever." 144 Cong. Rec. H9952 (daily ed. Oct. 7, 1998) (statement of Rep. Mary Bono). See also Copyright Term, Film Labeling, and Film Preservation Legislation: Hearings on H. R. 989 et al. before the Subcommittee on Courts and Intellectual Property of the House Judiciary Committee, 104th Cong., 1st Sess., 94 (1995) (hereinafter House Hearings) (statement of Rep. Sonny Bono) (questioning why copyrights should ever expire); *ibid.* (statement of Rep. Berman) ("I guess we could . . . just make a permanent moratorium on the expiration of copyrights"); *id.*, at 230 (statement of Rep. Hoke) ("Why 70 years? Why not forever? Why not 150 years?"); cf. *ibid.* (statement of the Register of Copyrights) (In Copyright Office proceedings, "[t]he Songwriters Guild suggested a perpetual term"); *id.*, at 234 (statement of Quincy Jones) ("I'm particularly fascinated with Representative Hoke's statement. . . . [W]hy not forever?"); *id.*, at 277 (statement of Quincy Jones) ("If we can start with 70, add 20, it would be a good start"). And the statute ended up creating a term so long that (were the vest-

ing of 19th-century real property at issue) it would typically violate the traditional rule against perpetuities. See 10 R. Powell, Real Property §§ 71.02[2]–[3], p. 71–11 (M. Wolf ed. 2002) (traditional rule that estate must vest, if at all, within lives in being plus 21 years); cf. *id.*, § 71.03, at 71–15 (modern statutory perpetuity term of 90 years, 5 years shorter than 95-year copyright terms).

In any event, the incentive-related numbers are far too small for Congress to have concluded rationally, even with respect to new works, that the extension's economic-incentive effect could justify the serious expression-related harms earlier described. See Part II–B, *supra.* And, of course, in respect to works already created—the source of many of the harms previously described—*the statute creates no economic incentive at all.* See *ante,* at 226–227 (STEVENS, J., dissenting).

Second, the Court relies heavily for justification upon international uniformity of terms. *Ante,* at 196, 205–206. Although it can be helpful to look to international norms and legal experience in understanding American law, cf. *Printz* v. *United States*, 521 U. S. 898, 977 (1997) (BREYER, J., dissenting), in this case the justification based upon foreign rules is surprisingly weak. Those who claim that significant copyright-related benefits flow from greater international uniformity of terms point to the fact that the nations of the European Union have adopted a system of copyright terms uniform among themselves. And the extension before this Court implements a term of life plus 70 years that appears to conform with the European standard. But how does "uniformity" help to justify this statute?

Despite appearances, the statute does *not* create a uniform American-European term with respect to the lion's share of the economically significant works that it affects—*all* works made "for hire" and *all* existing works created prior to 1978. See Appendix, Part B, *infra.* With respect to those works the American statute produces an extended term of 95 years

while comparable European rights in "for hire" works last for periods that vary from 50 years to 70 years to life plus 70 years. Compare 17 U. S. C. §§ 302(c), 304(a)–(b), with Council Directive 93/98/EEC of 29 October 1993 Harmonizing the Term of Protection of Copyright and Certain Related Rights, Arts. 1–3, 1993 Official J. Eur. Coms. (L 290), pp. 11–12 (hereinafter EU Council Directive 93/98). Neither does the statute create uniformity with respect to anonymous or pseudonymous works. Compare 17 U. S. C. §§ 302(c), 304(a)–(b), with EU Council Directive 93/98, Art. 1, p. 11.

The statute does produce uniformity with respect to copyrights in new, post-1977 works attributed to natural persons. Compare 17 U. S. C. § 302(a) with EU Council Directive 93/98, Art. 1(1), p. 11. But these works constitute only a subset (likely a minority) of works that retain commercial value after 75 years. See Appendix, Part B, *infra*. And the fact that uniformity comes so late, if at all, means that bringing American law into conformity with this particular aspect of European law will neither encourage creation nor benefit the long-dead author in any other important way.

What benefit, then, might this partial future uniformity achieve? The majority refers to "greater incentive for American and other authors to create and disseminate their work in the United States," and cites a law review article suggesting a need to "'avoid competitive disadvantages.'" *Ante*, at 206. The Solicitor General elaborates on this theme, postulating that because uncorrected disuniformity would permit Europe, not the United States, to hold out the prospect of protection lasting for "life plus 70 years" (instead of "life plus 50 years"), a potential author might decide to publish initially in Europe, delaying American publication. Brief for Respondent 38. And the statute, by creating a uniformly longer term, corrects for the disincentive that this disuniformity might otherwise produce.

That disincentive, however, could not possibly bring about serious harm of the sort that the Court, the Solicitor Gen-

eral, or the law review author fears. For one thing, it is unclear just who will be hurt and how, should American publication come second—for the Berne Convention still offers full protection as long as a second publication is delayed by 30 days. See Berne Conv. Arts. 3(4), 5(4). For another, few, if any, potential authors would turn a "where to publish" decision upon this particular difference in the length of the copyright term. As we have seen, the present commercial value of any such difference amounts at most to comparative pennies. See *supra*, at 254–256. And a commercial decision that turned upon such a difference would have had to have rested previously upon a knife edge so fine as to be invisible. A rational legislature could not give major weight to an invisible, likely nonexistent incentive-related effect.

But if there is no incentive-related benefit, what is the benefit of the future uniformity that the statute only partially achieves? Unlike the Copyright Act of 1976, this statute does not constitute part of an American effort to conform to an important international treaty like the Berne Convention. See H. R. Rep. No. 94–1476, pp. 135–136 (1976) (The 1976 Act's life-plus-50 term was "required for adherence to the Berne Convention"); S. Rep. No. 94–473, p. 118 (1975) (same). Nor does European acceptance of the longer term seem to reflect more than special European institutional considerations, *i. e.*, the needs of, and the international politics surrounding, the development of the European Union. House Hearings 230 (statement of the Register of Copyrights); *id.*, at 396–398 (statement of J. Reichman). European and American copyright law have long coexisted despite important differences, including Europe's traditional respect for authors' "moral rights" and the absence in Europe of constitutional restraints that restrict copyrights to "limited Times." See, *e. g.*, Kwall, Copyright and the Moral Right: Is an American Marriage Possible? 38 Vand. L. Rev. 1–3 (1985) (moral rights); House Hearings 187 (testimony of the Register of Copyrights) ("limited [T]imes").

In sum, the partial, future uniformity that the 1998 Act promises cannot reasonably be said to justify extension of the copyright term for new works. And concerns with uniformity cannot possibly justify the extension of the new term to older works, for the statute there creates no uniformity at all.

Third, several publishers and filmmakers argue that the statute provides incentives to *those who act as publishers* to republish and to redistribute older copyrighted works. This claim cannot justify this statute, however, because the rationale is inconsistent with the basic purpose of the Copyright Clause—as understood by the Framers and by this Court. The Clause assumes an initial grant of monopoly, designed primarily to encourage creation, followed by termination of the monopoly grant in order to promote dissemination of already-created works. It assumes that it is the *disappearance* of the monopoly grant, not its *perpetuation*, that will, on balance, promote the dissemination of works already in existence. This view of the Clause does not deny the empirical possibility that grant of a copyright monopoly to the heirs or successors of a long-dead author could *on occasion* help publishers resurrect the work, say, of a long-lost Shakespeare. But it does deny Congress the Copyright Clause power to base its actions primarily upon that empirical possibility—lest copyright grants become perpetual, lest on balance they restrict dissemination, lest too often they seek to bestow benefits that are solely retroactive.

This view of the Clause finds strong support in the writings of Madison, in the antimonopoly environment in which the Framers wrote the Clause, and in the history of the Clause's English antecedent, the Statute of Anne—a statute which sought to break up a publishers' monopoly by offering, as an alternative, an author's monopoly of limited duration. See Patterson, Understanding the Copyright Clause, 47 J. Copyright Soc. 365, 379 (2000) (Statute of Anne); L. Patterson, Copyright in Historical Perspective 144–147 (1968)

(same); Madison on Monopolies 756–757; Papers of Thomas Jefferson 442–443; The Constitutional Convention and the Formation of the Union 334, 338 (W. Solberg 2d ed. 1990); see also *supra*, at 246–247.

This view finds virtually conclusive support in the Court's own precedents. See *Sony*, 464 U. S., at 429 (The Copyright Clause is "intended . . . to allow the public access . . . after the limited period of exclusive control"); *Stewart*, 495 U. S., at 228 (The copyright term is limited to avoid "permanently depriv[ing]" the public of "the fruits of an artist's labors"); see also *supra*, at 245–246.

This view also finds textual support in the Copyright Clause's word "limited." Cf. J. Story, Commentaries on the Constitution § 558, p. 402 (R. Rotunda & J. Nowak eds. 1987) (The Copyright Clause benefits the public in part because it "admit[s] the people at large, after a *short* interval, to the full possession and enjoyment of all writings . . . without restraint" (emphasis added)). It finds added textual support in the word "Authors," which is difficult to reconcile with a rationale that rests entirely upon incentives given to publishers perhaps long after the death of the work's creator. Cf. *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 346–347 (1991).

It finds empirical support in sources that underscore the wisdom of the Framers' judgment. See CRS Report 3 ("[N]ew, cheaper editions can be expected when works come out of copyright"); see also Part II–B, *supra*. And it draws logical support from the endlessly self-perpetuating nature of the publishers' claim and the difficulty of finding any kind of logical stopping place were this Court to accept such a uniquely publisher-related rationale. (Would it justify continuing to extend copyrights indefinitely, say, for those granted to F. Scott Fitzgerald or his lesser known contemporaries? Would it not, in principle, justify continued protection of the works of Shakespeare, Melville, Mozart, or perhaps Salieri, Mozart's currently less popular contemporary?

Could it justify yet further extension of the copyright on the song Happy Birthday to You (melody first published in 1893, song copyrighted after litigation in 1935), *still in effect* and currently owned by a subsidiary of AOL Time Warner? See Profitable "Happy Birthday," Times of London, Aug. 5, 2000, p. 6.)

Given this support, it is difficult to accept the conflicting rationale that the publishers advance, namely, that extension, rather than limitation, of the grant will, by rewarding publishers with a form of monopoly, promote, rather than retard, the dissemination of works already in existence. Indeed, given these considerations, this rationale seems constitutionally perverse—unable, constitutionally speaking, to justify the blanket extension here at issue. Cf. *ante*, at 239–240 (STEVENS, J., dissenting).

Fourth, the statute's legislative history suggests another possible justification. That history refers frequently to the financial assistance the statute will bring the entertainment industry, particularly through the promotion of exports. See, *e. g.*, S. Rep. No. 104–315, p. 3 (1996) ("The purpose of the bill is to ensure adequate copyright protection for American works in foreign nations and the continued economic benefits of a healthy surplus balance of trade"); 144 Cong. Rec., at H9951 (statement of Rep. Foley) (noting "the importance of this issue to America's creative community," "[w]hether it is Sony, BMI, Disney," or other companies). I recognize that Congress has sometimes found that suppression of competition will help Americans sell abroad—though it has simultaneously taken care to protect American buyers from higher domestic prices. See, *e. g.*, Webb-Pomerene Act (Export Trade), 40 Stat. 516, as amended, 15 U. S. C. §§ 61–65; see also IA P. Areeda & H. Hovenkamp, Antitrust Law ¶ 251a, pp. 134–137 (2d ed. 2000) (criticizing export cartels). In doing so, however, Congress has exercised its commerce, not its copyright, power. I can find nothing in the Copyright Clause that would authorize Congress to enhance the

copyright grant's monopoly power, likely leading to higher prices both at home and abroad, *solely* in order to produce higher foreign earnings. That objective is not a *copyright* objective. Nor, standing alone, is it related to any other objective more closely tied to the Clause itself. Neither can higher corporate profits alone justify the grant's enhancement. The Clause seeks public, not private, benefits.

Finally, the Court mentions as possible justifications "demographic, economic, and technological changes"—by which the Court apparently means the facts that today people communicate with the help of modern technology, live longer, and have children at a later age. *Ante,* at 206–207, and n. 14. The first fact seems to argue not for, but instead against, extension. See Part II–B, *supra.* The second fact seems already corrected for by the 1976 Act's life-plus-50 term, which automatically grows with lifespans. Cf. Department of Health and Human Services, Centers for Disease Control and Prevention, Deaths: Final Data for 2000 (2002) (Table 8) (reporting a 4-year increase in expected lifespan between 1976 and 1998). And the third fact—that adults are having children later in life—is a makeweight at best, providing no explanation of why the 1976 Act's term of 50 years after an author's death—a longer term than was available to authors themselves for most of our Nation's history—is an insufficient potential bequest. The weakness of these final rationales simply underscores the conclusion that emerges from consideration of earlier attempts at justification: There is no legitimate, serious copyright-related justification for this statute.

III

The Court is concerned that our holding in this case not inhibit the broad decisionmaking leeway that the Copyright Clause grants Congress. *Ante,* at 204–205, 208, 222. It is concerned about the implications of today's decision for the Copyright Act of 1976—an Act that changed copyright's basic term from 56 years (assuming renewal) to life of the

author plus 50 years, *ante,* at 194–195. *Ante,* at 222. It is concerned about having to determine just how many years of copyright is too many—a determination that it fears would require it to find the "right" constitutional number, a task for which the Court is not well suited. See *ibid.;* but cf. *ante,* at 210, n. 17.

I share the Court's initial concern, about intrusion upon the decisionmaking authority of Congress. See *ante,* at 205, n. 10. But I do not believe it intrudes upon that authority to find the statute unconstitutional on the basis of (1) a legal analysis of the Copyright Clause's objectives, see *supra,* at 245–248, 260–263; (2) the total implausibility of any incentive effect, see *supra,* at 254–257; and (3) the statute's apparent failure to provide significant international uniformity, see *supra,* at 257–260. Nor does it intrude upon congressional authority to consider rationality in light of the expressive values underlying the Copyright Clause, related as it is to the First Amendment, and given the constitutional importance of correctly drawing the relevant Clause/Amendment boundary. *Supra,* at 243–245. We cannot avoid the need to examine the statute carefully by saying that "Congress has not altered the traditional contours of copyright protection," *ante,* at 221, for the sentence points to the question, rather than the answer. Nor should we avoid that examination here. That degree of judicial vigilance—at the far outer boundaries of the Clause—is warranted if we are to avoid the monopolies and consequent restrictions of expression that the Clause, read consistently with the First Amendment, seeks to preclude. And that vigilance is all the more necessary in a new century that will see intellectual property rights and the forms of expression that underlie them play an ever more important role in the Nation's economy and the lives of its citizens.

I do not share the Court's concern that my view of the 1998 Act could automatically doom the 1976 Act. Unlike the present statute, the 1976 Act thoroughly revised copyright law and enabled the United States to join the Berne Conven-

tion—an international treaty that requires the 1976 Act's basic life-plus-50 term as a condition for substantive protections from a copyright's very inception, Berne Conv. Art. 7(1). Consequently, the balance of copyright-related harms and benefits there is far less one sided. The same is true of the 1909 and 1831 Acts, which, in any event, provided for maximum terms of 56 years or 42 years while requiring renewal after 28 years, with most copyrighted works falling into the public domain after that 28-year period, well before the putative maximum terms had elapsed. See *ante*, at 194; Statistical History 956–957. Regardless, the law provides means to protect those who have reasonably relied upon prior copyright statutes. See *Heckler* v. *Mathews*, 465 U. S. 728, 746 (1984). And, in any event, we are not here considering, and we need not consider, the constitutionality of other copyright statutes.

Neither do I share the Court's aversion to line-drawing in this case. Even if it is difficult to draw a single clear bright line, the Court could easily decide (as I would decide) that this particular statute simply goes too far. And such examples—of what goes too far—sometimes offer better constitutional guidance than more absolute-sounding rules. In any event, "this Court sits" in part to decide when a statute exceeds a constitutional boundary. See *Panhandle Oil*, 277 U. S., at 223 (Holmes, J., dissenting). In my view, "[t]ext, history, and precedent," *ante*, at 199, support both the need to draw lines in general and the need to draw the line here short of this statute. See *supra*, at 242–248, 260–263. But see *ante*, at 199, n. 4.

Finally, the Court complains that I have not "restrained" my argument or "train[ed my] fire, as petitioners do, on Congress' choice to place existing and future copyrights in parity." *Ante*, at 193, n. 1, and 199, n. 4. The reason that I have not so limited my argument is my willingness to accept, for purposes of this opinion, the Court's understanding that, for reasons of "[j]ustice, policy, and equity"—as well as es-

tablished historical practice—it is not "categorically beyond Congress' authority" to "exten[d] the duration of existing copyrights" to achieve such parity. *Ante,* at 204 (internal quotation marks omitted). I have accepted this view, however, only for argument's sake—putting to the side, for the present, JUSTICE STEVENS' persuasive arguments to the contrary, *ante,* at 226–242 (dissenting opinion). And I make this assumption only to emphasize the lack of rational justification for the present statute. A desire for "parity" between *A* (old copyrights) and *B* (new copyrights) cannot justify extending *A* when there is no rational justification for extending *B.* At the very least (if I put aside my rationality characterization), to ask *B* to support *A* here is like asking Tom Thumb to support Paul Bunyan's ox. Where the case for extending new copyrights is itself so weak, what "justice," what "policy," what "equity" can warrant the tolls and barriers that extension of existing copyrights imposes?

IV

This statute will cause serious expression-related harm. It will likely restrict traditional dissemination of copyrighted works. It will likely inhibit new forms of dissemination through the use of new technology. It threatens to interfere with efforts to preserve our Nation's historical and cultural heritage and efforts to use that heritage, say, to educate our Nation's children. It is easy to understand how the statute might benefit the private financial interests of corporations or heirs who own existing copyrights. But I cannot find any constitutionally legitimate, copyright-related way in which the statute will benefit the public. Indeed, in respect to existing works, the serious public harm and the virtually nonexistent public benefit could not be more clear.

I have set forth the analysis upon which I rest these judgments. This analysis leads inexorably to the conclusion that the statute cannot be understood rationally to advance a constitutionally legitimate interest. The statute falls outside

the scope of legislative power that the Copyright Clause, read in light of the First Amendment, grants to Congress. I would hold the statute unconstitutional.

I respectfully dissent.

APPENDIX TO OPINION OF BREYER, J.

A

The text's estimates of the economic value of 1998 Act copyrights relative to the economic value of a perpetual copyright, s*upra*, at 255–256, as well as the incremental value of a 20-year extension of a 75-year term, *supra*, at 254–255, rest upon the conservative future value and discount rate assumptions set forth in the brief of economist *amici*. Brief for George A. Akerlof et al. as *Amici Curiae* 5–7. Under these assumptions, if an author expects to live 30 years after writing a book, the copyright extension (by increasing the copyright term from "life of the author plus 50 years" to "life of the author plus 70 years") increases the author's expected income from that book—*i. e.*, the economic incentive to write—by no more than about 0.33%. *Id.*, at 6.

The text assumes that the extension creates a term of 95 years (the term corresponding to works made for hire and for all existing pre-1978 copyrights). Under the economists' conservative assumptions, the value of a 95-year copyright is slightly more than 99.8% of the value of a perpetual copyright. See also Tr. of Oral Arg. 50 (Petitioners' statement of the 99.8% figure). If a "life plus 70" term applies, and if an author lives 78 years after creation of a work (as with Irving Berlin and Alexander's Ragtime Band), the same assumptions yield a figure of 99.996%.

The most unrealistically conservative aspect of these assumptions, *i. e.*, the aspect most unrealistically favorable to the majority, is the assumption of a constant future income stream. In fact, as noted in the text, *supra*, at 248, uncontested data indicate that no author could rationally expect

that a stream of copyright royalties will be constant forever. Indeed, only about 2% of copyrights can be expected to retain commercial value at the end of 55 to 75 years. *Ibid.* Thus, in the overwhelming majority of cases, the ultimate value of the extension to copyright holders will be zero, and the economic difference between the extended copyright and a perpetual copyright will be zero.

Nonetheless, there remains a small 2% or so chance that a given work will remain profitable. The CRS Report suggests a way to take account of both that likelihood and the related "decay" in a work's commercial viability: Find the annual decay rate that corresponds to the percentage of works that become commercially unavailable in any given year, and then discount the revenue for each successive year accordingly. See CRS Report 7. Following this approach, if one estimates, conservatively, that a full 2% of all works survives at the end of 75 years, the corresponding annual decay rate is about 5%. I instead (and again conservatively) use the 3.8% decay rate the CRS has applied in the case of books whose copyrights were renewed between 1950 and 1970. *Ibid.* Using this 3.8% decay rate and the economist *amici*'s proposed 7% discount rate, the value of a 95-year copyright is more realistically estimated not as 99.8%, but as 99.996% of the value of a perpetual copyright. The comparable "Irving Berlin" figure is 99.99999%. (With a 5% decay rate, the figures are 99.999% and 99.999998%, respectively.) Even these figures seem likely to be underestimates in the sense that they assume that, if a work is still commercially available, it earns as much as it did in a year shortly after its creation.

B

Conclusions regarding the economic significance of "works made for hire" are judgmental because statistical information about the ratio of "for hire" works to all works is scarce. Cf. *Community for Creative Non-Violence* v. *Reid,* 490 U. S. 730, 737–738, n. 4 (1989). But we know that, as of 1955,

copyrights on "for hire" works accounted for 40% of newly registered copyrights. Varmer, Works Made for Hire and on Commission, Study No. 13, in Copyright Law Revision Studies Nos. 1–19, prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Senate Committee on the Judiciary, 86th Cong., 2d Sess., 139, n. 49 (Comm. Print 1960). We also know that copyrights on works typically made for hire—feature-length movies—were renewed, and since the 1930's apparently have remained commercially viable, at a higher than average rate. CRS Report 13–14. Further, we know that "harmonization" looks to benefit United States exports, see, *e. g.*, H. R. Rep. No. 105–452, p. 4 (1998), and that films and sound recordings account for the dominant share of export revenues earned by new copyrighted works of potential lasting commercial value (*i. e.*, works other than computer software), S. Siwek, Copyright Industries in the U. S. Economy: The 2002 Report 17. It also appears generally accepted that, in these categories, "for hire" works predominate. *E. g.*, House Hearings 176 (testimony of the Register of Copyrights) ("[A]udiovisual works are generally works made for hire"). Taken together, these circumstances support the conclusion in the text that the extension fails to create uniformity where it would appear to be most important—pre-1978 copyrighted works nearing the end of their pre-extension terms, and works made for hire.

Syllabus

UNITED STATES *v.* JIMENEZ RECIO ET AL.

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

No. 01–1184. Argued November 12, 2002—Decided January 21, 2003

Ninth Circuit precedent states that a conspiracy terminates when "'there is affirmative evidence of . . . *defeat of the object of the conspiracy.*'" *United States* v. *Cruz*, 127 F. 3d 791, 795 (emphasis added). Here, police stopped a truck carrying illegal drugs, seized the drugs, and, with the help of the truck's drivers, set up a sting. The drivers paged a contact who said he would call someone to get the truck. Respondents Jimenez Recio and Lopez-Meza appeared in a car, and the former drove away in the truck, the latter in the car. After a jury convicted them of conspiring to possess and to distribute unlawful drugs, the judge ordered a new trial because, under *Cruz*, the jury could not convict respondents unless it believed they had joined the conspiracy before the police seized the drugs, and it had not been so instructed. The new jury convicted respondents, who appealed. The Ninth Circuit reversed, holding that the evidence presented at the second trial was insufficient to show that respondents had joined the conspiracy before the drug seizure.

Held: A conspiracy does not automatically terminate simply because the Government has defeated its object. Thus, the Ninth Circuit is incorrect in its view that a conspiracy ends through "defeat" when the Government intervenes, making the conspiracy's goals impossible to achieve, even if the conspirators do not know that the Government has intervened and are totally unaware that the conspiracy is bound to fail. First, the Ninth Circuit's rule is inconsistent with basic conspiracy law. The agreement to commit an unlawful act is "a distinct evil," which "may exist and be punished whether or not the substantive crime ensues." *Salinas* v. *United States*, 522 U. S. 52, 65. The conspiracy poses a "threat to the public" over and above the threat of the substantive crime's commission—both because the "[c]ombination in crime makes more likely the commission of [other] crimes" and because it "decreases the probability that the individuals involved will depart from their path of criminality." *E. g.*, *Callanan* v. *United States*, 364 U. S. 587, 593–594. Where police have frustrated a conspiracy's specific objective but conspirators (unaware of that fact) have neither abandoned the conspiracy nor withdrawn, these special conspiracy-related dangers remain, as does the conspiracy's essence—the agreement to commit the

crime. Second, this Court's view is that of almost all courts and commentators but for the Ninth Circuit. No other Federal Court of Appeals has adopted the Ninth Circuit's rule, and three have explicitly rejected it. The *Cruz* majority argued that the traditional rule threatened "endless" potential liability. But the majority's example illustrating that point—a sting in which police instructed an arrested conspirator to call all of his acquaintances to come and help him, with the Government obtaining convictions of those who did so—draws its persuasive force from the fact that it bears certain resemblances to entrapment, which the law independently forbids. At the same time, the *Cruz* rule would reach well beyond arguable police misbehavior, potentially threatening the use of properly run law enforcement sting operations. See *Lewis* v. *United States*, 385 U. S. 206, 208–209. Ninth Circuit precedent, whereby the language "'the defendant . . . defeated its purpose'" in *United States* v. *Krasn*, 614 F. 2d 1229, 1236, was changed to "a conspiracy is presumed to continue until *there is* . . . defeat of the [conspiracy's purpose]" in *United States* v. *Bloch*, 696 F. 2d 1213, 1215 (emphasis added), may help to explain the *Cruz* rule's origin. But, since the Ninth Circuit's earlier cases nowhere give any reason for the critical language change, they cannot help to justify it. Pp. 274–277.

258 F. 3d 1069, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 278.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Chertoff*, *James A. Feldman*, and *Jonathan L. Marcus*.

M. Karl Shurtliff argued the cause for respondents and filed a brief for respondent Jimenez Recio. *Thomas A. Sullivan* filed a brief for respondent Lopez-Meza.*

**Jay Alan Sekulow*, *Stuart J. Roth*, *Colby M. May*, *Joel H. Thornton*, *John P. Tuskey*, and *Shannon D. Woodruff* filed a brief for the American Center for Law and Justice et al. as *amici curiae* urging reversal.

JUSTICE BREYER delivered the opinion of the Court.

We here consider the validity of a Ninth Circuit rule that a conspiracy ends automatically when the object of the conspiracy becomes impossible to achieve—when, for example, the Government frustrates a drug conspiracy's objective by seizing the drugs that its members have agreed to distribute. In our view, conspiracy law does not contain any such "automatic termination" rule.

I

In *United States* v. *Cruz*, 127 F. 3d 791, 795 (CA9 1997), the Ninth Circuit, following the language of an earlier case, *United States* v. *Castro*, 972 F. 2d 1107, 1112 (CA9 1992), wrote that a conspiracy terminates when "'there is affirmative evidence of abandonment, withdrawal, disavowal *or defeat of the object of the conspiracy.*'" (Emphasis added.) It considered the conviction of an individual who, the Government had charged, joined a conspiracy (to distribute drugs) after the Government had seized the drugs in question. The Circuit found that the Government's seizure of the drugs guaranteed the "defeat" of the conspiracy's objective, namely, drug distribution. The Circuit held that the conspiracy had terminated with that "defeat," *i. e.*, when the Government seized the drugs. Hence the individual, who had joined the conspiracy after that point, could not be convicted as a conspiracy member.

In this case the lower courts applied the *Cruz* rule to similar facts: On November 18, 1997, police stopped a truck in Nevada. They found, and seized, a large stash of illegal drugs. With the help of the truck's two drivers, they set up a sting. The Government took the truck to the drivers' destination, a mall in Idaho. The drivers paged a contact and described the truck's location. The contact said that he would call someone to get the truck. And three hours later, the two defendants, Francisco Jimenez Recio and Adrian Lopez-Meza, appeared in a car. Jimenez Recio drove away in the truck; Lopez-Meza drove the car away in a simi-

lar direction. Police stopped both vehicles and arrested both men.

A federal grand jury indicted Jimenez Recio, Lopez-Meza, and the two original truck drivers, charging them with having conspired, together and with others, to possess and to distribute unlawful drugs. A jury convicted all four. But the trial judge then decided that the jury instructions had been erroneous in respect to Jimenez Recio and Lopez-Meza. The judge noted that the Ninth Circuit, in *Cruz*, had held that the Government could not prosecute drug conspiracy defendants unless they had joined the conspiracy before the Government seized the drugs. See *Cruz*, *supra*, at 795–796. That holding, as applied here, meant that the jury could not convict Jimenez Recio and Lopez-Meza unless the jury believed they had joined the conspiracy before the Nevada police stopped the truck and seized the drugs. The judge ordered a new trial where the jury would be instructed to that effect. The new jury convicted the two men once again.

Jimenez Recio and Lopez-Meza appealed. They pointed out that, given *Cruz*, the jury had to find that they had joined the conspiracy before the Nevada stop, and they claimed that the evidence was insufficient at both trials to warrant any such jury finding. The Ninth Circuit panel, by a vote of 2 to 1, agreed. All three panel members accepted *Cruz* as binding law. Two members concluded that the evidence presented at the second trial was not sufficient to show that the defendants had joined the conspiracy before the Nevada drug seizure. One of the two wrote that the evidence at the first trial was not sufficient either, a circumstance she believed independently warranted reversal. The third member, dissenting, believed that the evidence at both trials adequately demonstrated preseizure membership. He added that he, like the other panel members, was bound by *Cruz*, but he wrote that in his view *Cruz* was "totally inconsistent with long established and appropriate principles of the law of conspiracy," and he urged the Circuit to overrule it en

banc "at the earliest opportunity." 258 F. 3d 1069, 1079, n. 2 (2001) (opinion of Gould, J.).

The Government sought certiorari. It noted that the Ninth Circuit's holding in this case was premised upon the legal rule enunciated in *Cruz.* And it asked us to decide the rule's validity, *i. e.,* to decide whether "a conspiracy ends as a matter of law when the government frustrates its objective." Pet. for Cert. (I). We agreed to consider that question.

II

In *Cruz,* the Ninth Circuit held that a conspiracy continues "'until there is affirmative evidence of abandonment, withdrawal, disavowal or defeat of the object of the conspiracy.'" 127 F. 3d, at 795 (quoting *Castro, supra,* at 1112). The critical portion of this statement is the last segment, that a conspiracy ends once there has been "'defeat of [its] object.'" The Circuit's holdings make clear that the phrase means that the conspiracy ends through "defeat" when the Government intervenes, making the conspiracy's goals impossible to achieve, even if the conspirators do not know that the Government has intervened and are totally unaware that the conspiracy is bound to fail. In our view, this statement of the law is incorrect. A conspiracy does not automatically terminate simply because the Government, unbeknownst to some of the conspirators, has "defeat[ed]" the conspiracy's "object."

Two basic considerations convince us that this is the proper view of the law. First, the Ninth Circuit's rule is inconsistent with our own understanding of basic conspiracy law. The Court has repeatedly said that the essence of a conspiracy is "an agreement to commit an unlawful act." *Iannelli* v. *United States,* 420 U. S. 770, 777 (1975); see *United States* v. *Shabani,* 513 U. S. 10, 16 (1994); *Braverman* v. *United States,* 317 U. S. 49, 53 (1942). That agreement is "a distinct evil," which "may exist and be punished whether or not the substantive crime ensues." *Salinas* v. *United*

States, 522 U. S. 52, 65 (1997). The conspiracy poses a "threat to the public" over and above the threat of the commission of the relevant substantive crime—both because the "[c]ombination in crime makes more likely the commission of [other] crimes" and because it "decreases the probability that the individuals involved will depart from their path of criminality." *Callanan* v. *United States*, 364 U. S. 587, 593–594 (1961); see also *United States* v. *Rabinowich*, 238 U. S. 78, 88 (1915) (conspiracy "sometimes quite outweigh[s], in injury to the public, the mere commission of the contemplated crime"). Where police have frustrated a conspiracy's specific objective but conspirators (unaware of that fact) have neither abandoned the conspiracy nor withdrawn, these special conspiracy-related dangers remain. Cf. 2 W. LaFave & A. Scott, Substantive Criminal Law § 6.5, p. 85 (1986) ("[i]mpossibility" does not terminate conspiracy because "criminal combinations are dangerous apart from the danger of attaining the particular objective"). So too remains the essence of the conspiracy—the agreement to commit the crime. That being so, the Government's defeat of the conspiracy's objective will not necessarily and automatically terminate the conspiracy.

Second, the view we endorse today is the view of almost all courts and commentators but for the Ninth Circuit. No other Federal Court of Appeals has adopted the Ninth Circuit's rule. Three have explicitly rejected it. In *United States* v. *Wallace*, 85 F. 3d 1063, 1068 (CA2 1996), for example, the court said that the fact that a "conspiracy cannot actually be realized because of facts unknown to the conspirators is irrelevant." See also *United States* v. *Belardo-Quiñones*, 71 F. 3d 941, 944 (CA1 1995) (conspiracy exists even if, unbeknownst to conspirators, crime is impossible to commit); *United States* v. *LaBudda*, 882 F. 2d 244, 248 (CA7 1989) (defendants can be found guilty of conspiracy even if conspiracy's object "is unattainable from the very beginning"). One treatise, after surveying lower court conspir-

acy decisions, has concluded that "[i]mpossibility of success is not a defense." 2 LaFave & Scott, Substantive Criminal Law § 6.5, at 85; see also *id.*, § 6.5(b), at 90–93. And the American Law Institute's Model Penal Code § 5.03, p. 384 (1985), would find that a conspiracy "terminates when the crime or crimes that are its object are committed" or when the relevant "agreement . . . is abandoned." It would not find "impossibility" a basis for termination.

The *Cruz* majority argued that the more traditional termination rule threatened "endless" potential liability. To illustrate the point, the majority posited a sting in which police instructed an arrested conspirator to go through the "telephone directory . . . [and] call all of his acquaintances" to come and help him, with the Government obtaining convictions of those who did so. 127 F. 3d, at 795, n. 3. The problem with this example, however, is that, even though it is not necessarily an example of entrapment itself, it draws its persuasive force from the fact that it bears certain resemblances to entrapment. The law independently forbids convictions that rest upon entrapment. See *Jacobson* v. *United States*, 503 U. S. 540, 548–549 (1992); *Sorrells* v. *United States*, 287 U. S. 435, 442–445 (1932). And the example fails to explain why a different branch of the law, conspiracy law, should be modified to forbid entrapment-like behavior that falls outside the bounds of current entrapment law. Cf. *United States* v. *Russell*, 411 U. S. 423, 435 (1973) ("defense of entrapment . . . not intended to give the federal judiciary . . . veto" over disapproved "law enforcement practices"). At the same time, the *Cruz* rule would reach well beyond arguable police misbehavior, potentially threatening the use of properly run law enforcement sting operations. See *Lewis* v. *United States*, 385 U. S. 206, 208–209 (1966) (Government may "use decoys" and conceal agents' identity); see also M. Lyman, Criminal Investigation 484–485 (2d ed. 1999) (explaining the importance of undercover operations in enforcing drug laws).

In tracing the origins of the statement of conspiracy law upon which the *Cruz* panel relied, we have found a 1982 Ninth Circuit case, *United States* v. *Bloch*, 696 F. 2d 1213, in which the court, referring to an earlier case, *United States* v. *Krasn*, 614 F. 2d 1229 (CA9 1980), changed the language of the traditional conspiracy termination rule. *Krasn* said that a conspiracy is "'presumed to continue unless there is affirmative evidence that *the defendant* abandoned, withdrew from, or disavowed the conspiracy *or defeated its purpose.*'" *Id.*, at 1236 (emphasis added). The *Bloch* panel changed the grammatical structure. It said that "a conspiracy is presumed to continue until *there is* . . . defeat of the purposes of the conspiracy." 696 F. 2d, at 1215 (emphasis added). Later Ninth Circuit cases apparently read the change to mean that a conspiracy terminates, not only when the *defendant* defeats its objective, but also when *someone else* defeats that objective, perhaps the police. In *Castro*, the panel followed *Bloch*. 972 F. 2d, at 1112. In *Cruz*, the panel quoted *Castro*. 127 F. 3d, at 795. This history may help to explain the origin of the *Cruz* rule. But, since the Circuit's earlier cases nowhere give any reason for the critical change of language, they cannot help to justify it.

III

We conclude that the Ninth Circuit's conspiracy-termination law holding set forth in *Cruz* is erroneous in the manner discussed. We reverse the present judgment insofar as it relies upon that holding. Because Jimenez Recio and Lopez-Meza have raised other arguments not here considered, we remand the case, specifying that the Court of Appeals may consider those arguments, if they were properly raised.

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

It is so ordered.

JUSTICE STEVENS, concurring in part and dissenting in part.

In accordance with *United States* v. *Cruz*, 127 F. 3d 791, 795–796 (CA9 1997), the District Judge charged the jury with the following instruction:

> "A defendant may only be found guilty of the conspiracy charged in the indictment if he joined the conspiracy at a time when it was possible to achieve the objective of that conspiracy." App. to Pet. for Cert. 75a–76a.

For the reasons stated in the Court's opinion, that instruction was erroneous.

My reason for not joining the Court's opinion without qualification is procedural. The relevant Rule in effect at the time of this trial provided: "No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection." Fed. Rule Crim. Proc. 30 (1988). The Government neither objected to the erroneous instruction at trial, nor bothered to question the validity of the *Cruz* decision on appeal to the Ninth Circuit.* Although the Government did challenge *Cruz* in its petition for rehearing en banc, in my judgment that challenge came too late to preserve the question the Court decides today.

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*Indeed, the Government embraced the flawed *Cruz* rule in its closing argument to the jury:

"So, in summary, assuming that you find that this conspiracy simply encompassed the one load, in order for each defendant to be found guilty, what must be proved beyond a reasonable doubt? That there was a drug conspiracy; number 2, it was limited to just the one load that was seized; the defendant joined that conspiracy, became involved in the conspiracy; the defendant joined or became involved *before the narcotics were seized* . . . . If one of those elements is missing, you must acquit. That's the burden that's placed on the United States, *one that we willingly accept.*" App. to Brief in Opposition 34a (emphases added).

Cf. *United States* v. *Williams*, 504 U. S. 36, 56–60 (1992) (STEVENS, J., dissenting). The prosecutor, like the defendant, should be required to turn square corners.

Syllabus

MEYER *v.* HOLLEY ET AL.

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

No. 01–1120. Argued December 3, 2002—Decided January 22, 2003

The Fair Housing Act forbids racial discrimination in respect to the sale or rental of a dwelling. 42 U. S. C. §§ 3604(b), 3605(a). Respondent Holleys, an interracial couple, tried to buy a house listed for sale by Triad, a real estate corporation. A Triad salesman is alleged to have prevented the Holleys from buying the house for racially discriminatory reasons. After filing suit in federal court against the salesman and Triad, the Holleys filed a separate suit against petitioner Meyer, Triad's president, sole shareholder, and licensed "officer/broker," claiming that he was vicariously liable in one or more of these capacities for the salesman's unlawful actions. The District Court consolidated the lawsuits and dismissed the claims against Meyer because (1) it considered them vicarious liability assertions, and (2) it believed that the Fair Housing Act did not impose personal vicarious liability upon a corporate officer or a "designated officer/broker." In reversing, the Ninth Circuit in effect held that the Act imposes strict liability principles beyond those traditionally associated with agent/principal or employee/employer relationships.

Held: The Act imposes liability without fault upon the employer in accordance with traditional agency principles, *i. e.*, it normally imposes vicarious liability upon the corporation but not upon its officers or owners. Pp. 285–292.

(a) Although the Act says nothing about vicarious liability, it is nonetheless well established that it provides for such liability. The Court has assumed that, when Congress creates a tort action, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules. Traditional vicarious liability rules ordinarily make principals or employers vicariously liable for the acts of their agents or employees in the scope of their authority or employment. *E. g., Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 756. Absent special circumstances, it is the corporation, not its owner or officer, who is the principal or employer subject to vicarious liability for the torts of its employees or agents. The Ninth Circuit's holding that the Act made corporate owners and officers liable for an employee's unlawful acts simply because they controlled (or had the right to control) that employee's actions is

rejected. For one thing, Congress said nothing in the Act or in the legislative history about extending vicarious liability in this manner. And such silence, while permitting an inference that Congress intended to apply *ordinary* background tort principles, cannot show that it intended to apply an unusual modification of those rules. This Court has applied unusually strict rules only where Congress has specified that such was its intent. See, *e. g.*, *United States* v. *Dotterweich*, 320 U. S. 277, 280–281. For another thing, the Department of Housing and Urban Development (HUD), the agency primarily charged with the Act's implementation and administration, has specified that ordinary vicarious liability rules apply in this area, and the Court ordinarily defers to an administering agency's reasonable statutory interpretation, *e. g.*, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845; *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140. Finally, no convincing argument supports the Ninth Circuit's decision to apply nontraditional vicarious liability principles. It erred in relying on language in a then-applicable HUD regulation, which, taken as a whole, says that ordinary, not unusual, liability rules apply. And the holdings in cases from other Circuits that the Ninth Circuit cited do not support the kind of nontraditional liability that it applied, nor does the language of those cases provide a convincing rationale for the Ninth Circuit's conclusions. Pp. 285–289.

(b) Nothing in the Act's language or legislative history supports the existence of a corporate owner's or officer's "nondelegable duty" not to discriminate. Such a duty imposed on a principal would "go further" than the vicarious liability principles discussed thus far to create liability although the principal has done everything that could reasonably be required of him, and irrespective of whether the agent was acting with or without authority. In the absence of legal support, the Court cannot conclude that Congress intended, through silence, to impose a special duty of protection upon individual officers or owners of corporations—who are not principals (or contracting parties) in respect to the corporation's unlawfully acting employee. Neither does it help to characterize the Act's objective as an overriding societal priority. The complex question of which one of two innocent people must suffer, and when, should be answered in accordance with traditional principles of vicarious liability—unless Congress has instructed the courts differently. Pp. 289–291.

(c) The Court does not address respondents' remaining contentions because they were not considered by the Court of Appeals. The Ninth Circuit remains free on remand to consider any such arguments that were properly raised. Pp. 291–292.

258 F. 3d 1127, vacated and remanded.

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

Douglas G. Benedon argued the cause for petitioner. With him on the briefs was *Gerald M. Serlin.*

Robert G. Schwemm argued the cause for respondents. With him on the brief were *Elizabeth Brancart*, *Christopher Brancart*, and *Greg Alexanian.*

Malcolm L. Stewart argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Boyd*, *Deputy Solicitor General Clement*, and *David K. Flynn.**

JUSTICE BREYER delivered the opinion of the Court.

The Fair Housing Act forbids racial discrimination in respect to the sale or rental of a dwelling. 82 Stat. 81, 42 U. S. C. §§ 3604(b), 3605(a). The question before us is whether the Act imposes personal liability without fault upon an officer or owner of a residential real estate corporation for the unlawful activity of the *corporation's* employee or agent. We conclude that the Act imposes liability without fault upon the employer in accordance with traditional agency principles, *i. e.*, it normally imposes vicarious liability upon the corporation but not upon its officers or owners.

I

For purposes of this decision we simplify the background facts as follows: Respondents Emma Mary Ellen Holley and

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*Briefs of *amici curiae* urging reversal were filed for the California Association of Realtors by *June Babiracki Barlow* and *Neil Kalin;* for the National Association of Home Builders by *Christopher G. Senior;* and for the National Association of Realtors by *Laurene K. Janik* and *Ralph W. Holmen.*

Briefs of *amici curiae* urging affirmance were filed for the International Association of Official Human Rights Agencies by *Bruce V. Spiva* and *Jessie K. Liu;* and for the National Fair Housing Alliance et al. by *John P. Relman*, *Meera Trehan*, and *Virginia A. Seitz.*

David Holley, an interracial couple, tried to buy a house in Twenty-Nine Palms, California. A real estate corporation, Triad, Inc., had listed the house for sale. Grove Crank, a Triad salesman, is alleged to have prevented the Holleys from obtaining the house—and for racially discriminatory reasons.

The Holleys brought a lawsuit in federal court against Crank and Triad. They claimed, among other things, that both were responsible for a fair housing law violation. The Holleys later filed a separate suit against David Meyer, the petitioner here. Meyer, they said, was Triad's president, Triad's sole shareholder, and Triad's licensed "officer/broker," see Cal. Code Regs., tit. 10, § 2740 (1996) (formerly Cal. Admin. Code, tit. 10, § 2740) (requiring that a corporation, in order to engage in acts for which a real estate license is required, designate one of its officers to act as the licensed broker); Cal. Bus. & Prof. Code Ann. §§ 10158, 10159, 10211 (West 1987). They claimed that Meyer was vicariously liable in one or more of these capacities for Crank's unlawful actions.

The District Court consolidated the two lawsuits. It dismissed all claims other than the Fair Housing Act claim on statute of limitations grounds. It dismissed the claims against Meyer in his capacity as officer of Triad because (1) it considered those claims as assertions of *vicarious* liability, and (2) it believed that the Fair Housing Act did not impose personal vicarious liability upon a corporate *officer*. The District Court stated that "any liability against Meyer as an officer of Triad would only attach to Triad," the corporation. App. 31. The court added that the Holleys had "not urged theories that could justify reaching Meyer individually." *Ibid.* It later went on to dismiss for similar reasons claims of vicarious liability against Meyer in his capacity as the "designated officer/broker" in respect to Triad's real estate license. *Id.*, at 52–55.

The District Court certified its judgment as final to permit the Holleys to appeal its vicarious liability determinations. See Fed. Rule Civ. Proc. 54(b). The Ninth Circuit reversed those determinations. 258 F. 3d 1127 (2001). The Court of Appeals recognized that "under general principles of tort law corporate shareholders and officers usually are not held vicariously liable for an employee's action," but, in its view, "the criteria for the Fair Housing Act" are "different." *Id.*, at 1129. That Act, it said, "specified" liability "for those who direct or control or have the right to direct or control the conduct of another"—even if they were not at all involved in the discrimination itself and even in the absence of any traditional agent/principal or employee/employer relationship, *id.*, at 1129, 1131. Meyer, in his capacity as Triad's sole owner, had "the authority to control the acts" of a Triad salesperson. *Id.*, at 1133. Meyer, in his capacity as Triad's officer, "did direct or control, or had the right to direct or control, the conduct" of a Triad salesperson. *Ibid.* And even if Meyer neither participated in nor authorized the discrimination in question, that "control" or "authority to control" is "enough . . . to hold Meyer personally liable." *Ibid.* The Ninth Circuit added that, for similar reasons, Meyer, in his capacity as Triad's license-related officer/broker, was vicariously liable for Crank's discriminatory activity. *Id.*, at 1134–1135.

Meyer sought certiorari. We granted his petition, 535 U. S. 1077 (2002), to review the Ninth Circuit's holding that the Fair Housing Act imposes principles of strict liability beyond those traditionally associated with agent/principal or employee/employer relationships. We agreed to decide whether "the criteria under the Fair Housing Act . . . are different, so that owners and officers of corporations" are automatically and "absolutely liable for an employee's or agent's violation of the Act"—even if they did not direct or authorize, and were otherwise not involved in, the unlawful discriminatory acts. Pet. for Cert. i.

II

The Fair Housing Act itself focuses on prohibited acts. In relevant part the Act forbids "any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate," for example, because of "race." 42 U. S. C. § 3605(a). It adds that "[p]erson" includes, for example, individuals, corporations, partnerships, associations, labor unions, and other organizations. § 3602(d). It says nothing about vicarious liability.

Nonetheless, it is well established that the Act provides for vicarious liability. This Court has noted that an action brought for compensation by a victim of housing discrimination is, in effect, a tort action. See *Curtis* v. *Loether*, 415 U. S. 189, 195–196 (1974). And the Court has assumed that, when Congress creates a tort action, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules. *Monterey* v. *Del Monte Dunes at Monterey, Ltd.*, 526 U. S. 687, 709 (1999) (listing this Court's precedents that interpret Rev. Stat. § 1979, 42 U. S. C. § 1983, in which Congress created "a species of tort liability," "in light of the background of tort liability" (internal quotation marks omitted)). Cf. *Astoria Fed. Sav. & Loan Assn.* v. *Solimino*, 501 U. S. 104, 108 (1991) ("Congress is understood to legislate against a background of common-law . . . principles"); *United States* v. *Texas*, 507 U. S. 529, 534 (1993) ("In order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law").

It is well established that traditional vicarious liability rules ordinarily make principals or employers vicariously liable for acts of their agents or employees in the scope of their authority or employment. *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 756 (1998) ("An employer may be liable for both negligent and intentional torts committed by an employee within the scope of his or her employment"); *New Orleans, M., & C. R. Co.* v. *Hanning*, 15 Wall. 649, 657 (1873)

("The principal is liable for the acts and negligence of the agent in the course of his employment, although he did not authorize or did not know of the acts complained of"); see *Rosenthal & Co.* v. *Commodity Futures Trading Comm'n*, 802 F. 2d 963, 967 (CA7 1986) ("'respondeat superior' . . . is a doctrine about employers . . . and other principals"); Restatement (Second) of Agency § 219(1) (1957) (Restatement). And in the absence of special circumstances it is the corporation, not its owner or officer, who is the principal or employer, and thus subject to vicarious liability for torts committed by its employees or agents. 3A W. Fletcher, Cyclopedia of the Law of Private Corporations § 1137, pp. 300–301 (rev. ed. 1991–1994); 10 *id.*, § 4877 (rev. ed. 1997–2001). The Restatement § 1 specifies that the relevant principal/agency relationship demands not only control (or the right to direct or control) but also "the manifestation of consent by one person to another that the other shall act *on his behalf* . . . , and consent by the other so to act." (Emphasis added.) A corporate employee typically acts on behalf of the corporation, not its owner or officer.

The Ninth Circuit held that the Fair Housing Act imposed more extensive vicarious liability—that the Act went well beyond traditional principles. The Court of Appeals held that the Act made corporate owners and officers liable for the unlawful acts of a corporate employee simply on the basis that the owner or officer controlled (or had the right to control) the actions of that employee. We do not agree with the Ninth Circuit that the Act extended traditional vicarious liability rules in this way.

For one thing, Congress said nothing in the statute or in the legislative history about extending vicarious liability in this manner. And Congress' silence, while permitting an inference that Congress intended to apply *ordinary* background tort principles, cannot show that it intended to apply an unusual modification of those rules.

Where Congress, in other civil rights statutes, has not expressed a contrary intent, the Court has drawn the inference that it intended ordinary rules to apply. See, *e. g.*, *Burlington Industries, Inc.*, *supra*, at 754–755 (deciding an employer's vicarious liability under Title VII based on traditional agency principles); *Meritor Savings Bank, FSB* v. *Vinson*, 477 U. S. 57, 72 (1986) ("Congress wanted courts to look to agency principles for guidance").

This Court has applied unusually strict rules only where Congress has specified that such was its intent. See, *e. g.*, *United States* v. *Dotterweich*, 320 U. S. 277, 280–281 (1943) (Congress intended that a corporate officer or employee "standing in responsible relation" could be held liable in that capacity for a corporation's violations of the Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1040, 21 U. S. C. §§ 301–392); *United States* v. *Park*, 421 U. S. 658, 673 (1975) (discussing, with respect to the Federal Food, Drug, and Cosmetic Act, congressional intent to impose a duty on "responsible corporate agents"); *United States* v. *Wise*, 370 U. S. 405, 411–414 (1962) (discussing 38 Stat. 736, currently 15 U. S. C. § 24, which provides: "[W]henever a corporation shall violate any of the . . . antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation"); see also 46 U. S. C. § 12507(d) ("If a person, not an individual, is involved in a violation [relating to a vessel identification system], the president or chief executive of the person also is subject to any penalty provided under this section").

For another thing, the Department of Housing and Urban Development (HUD), the federal agency primarily charged with the implementation and administration of the statute, 42 U. S. C. § 3608, has specified that ordinary vicarious liability rules apply in this area. And we ordinarily defer to an administering agency's reasonable interpretation of a stat-

ute. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984); *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944).

A HUD regulation applicable during the relevant time periods for this suit provided that analogous administrative complaints alleging Fair Housing Act violations may be filed

> "against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale . . . of dwellings . . . *if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person* . . . has engaged . . . in a discriminatory housing practice." 24 CFR § 103.20(b) (1999) (repealed) (emphasis added).

See *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 107 (1979) (treating administrative actions under 42 U. S. C. § 3610 and civil actions under § 3613 as alternative, but parallel, proceedings).

When it adopted the similar predecessor to this regulation (then codified at 24 CFR § 105.13, see 53 Fed. Reg. 24185 (1988)), HUD explained that it intended to permit a "respondent" (defined at 42 U. S. C. § 3602) to raise in an administrative proceeding any defense "that could be raised in court." 53 Fed. Reg., at 24185. It added that the underscored phrase was designed to make clear that "a complaint may be filed against a directing or controlling person with respect to the discriminatory acts of another only if the other person was acting within the scope of his or her authority as *employee or agent of the directing or controlling person.*" *Ibid.* (emphasis added). HUD also specified that, by adding the words "acting within the scope of his or her authority as employee or agent of the directing or controlling person," it disclaimed any "intent to impose absolute liability" on the basis of the mere right "to direct or control." *Ibid.;* see 54 Fed. Reg. 3232, 3261 (1989).

Finally, we have found no convincing argument in support of the Ninth Circuit's decision to apply nontraditional vicarious liability principles—a decision that respondents do not defend and in fact concede is incorrect. See Brief for Respondents 6, 10–11, 43 (conceding that traditional vicarious liability rules apply); Brief for United States as *Amicus Curiae* 8, 22. The Ninth Circuit rested that decision primarily upon the HUD regulation to which we have referred. The Ninth Circuit underscored the phrase "'*or has the right to direct or contro[l] the conduct of another person.*'" 258 F. 3d, at 1130. Its opinion did not explain, however, why the Ninth Circuit did not read these words as modified by the subsequent words that limited vicarious liability to actions taken as "'employee or agent of the directing or controlling person.'" *Id.*, at 1131. Taken as a whole, the regulation, in our view, says that ordinary, not unusual, rules of vicarious liability should apply.

The Ninth Circuit also referred to several cases decided in other Circuits. The actual holdings in those cases, however, do not support the kind of nontraditional vicarious liability that the Ninth Circuit applied. See *Chicago* v. *Matchmaker Real Estate Sales Center, Inc.*, 982 F. 2d 1086 (CA7 1992) (defendant corporation liable for the acts of *its* agents; shareholder directly, not vicariously, liable); *Walker* v. *Crigler*, 976 F. 2d 900 (CA4 1992) (owner of rental property liable for the discriminatory acts of agent, the property's manager); *Marr* v. *Rife*, 503 F. 2d 735 (CA6 1974) (real estate agency's owner liable for the discriminatory acts of his agency's salespersons, but without statement of whether agency was a corporation). Nor does the language of these cases provide a convincing rationale for the Ninth Circuit's conclusions.

The Ninth Circuit further referred to an owner's or officer's "non delegable duty" not to discriminate in light of the Act's "overriding societal priority." 258 F. 3d, at 1131, 1132 (citing *Chicago* v. *Matchmaker Real Estate Sales Center, Inc.*, *supra*, at 1096–1097, and *Walker* v. *Crigler*, *supra*, at

904–905). And it added that "[w]hen one of two innocent people must suffer, the one whose acts permitted the wrong to occur is the one to bear the burden." 258 F. 3d, at 1132.

"[A] nondelegable duty is an affirmative obligation to ensure the protection of the person to whom the duty runs." *General Building Contractors Assn., Inc.* v. *Pennsylvania*, 458 U. S. 375, 396 (1982) (finding no nondelegable duty under 42 U. S. C. § 1981). Such a duty imposed upon a principal would "go further" than the vicarious liability principles we have discussed thus far to create liability "although [the principal] has himself done everything that could reasonably be required of him," W. Prosser, Law of Torts § 71, p. 470 (4th ed. 1971), and irrespective of whether the agent was acting with or without authority. The Ninth Circuit identifies nothing in the language or legislative history of the Act to support the existence of this special kind of liability—the kind of liability that, for example, the law might impose in certain special circumstances upon a principal or employer that hires an independent contractor. Restatement § 214; see 5 F. Harper, F. James, & O. Gray, Law of Torts § 26.11 (2d ed. 1986); Prosser, *supra*, § 71, at 470–471. In the absence of legal support, we cannot conclude that Congress intended, through silence, to impose this kind of special duty of protection upon individual officers or owners of corporations—who are not principals (or contracting parties) in respect to the corporation's unlawfully acting employee.

Neither does it help to characterize the statute's objective as an "overriding societal priority." 258 F. 3d, at 1132. We agree with the characterization. But we do not agree that the characterization carries with it a legal rule that would hold every corporate supervisor personally liable without fault for the unlawful act of every corporate employee whom he or she has the right to supervise. Rather, which "of two innocent people must suffer," *ibid.*, and just when, is a complex matter. We believe that courts ordinarily should determine that matter in accordance with traditional principles of

vicarious liability—unless, of course, Congress, better able than courts to weigh the relevant policy considerations, has instructed the courts differently. Cf., *e. g.*, Sykes, The Economics of Vicarious Liability, 93 Yale L. J. 1231, 1236 (1984) (arguing that the expansion of vicarious liability or shifting of liability, due to insurance, may diminish an agent's incentives to police behavior). We have found no different instruction here.

III

A

Respondents, conceding that traditional vicarious liability rules apply, see *supra*, at 289, argue that those principles themselves warrant liability here. For one thing, they say, California law itself creates what amounts, under ordinary common-law principles, to an employer/employee or principal/agent relationship between (a) a corporate officer designated as the broker under a real estate license issued to the corporation, and (b) a corporate employee/salesperson. Brief for Respondents 6–8, 13–36. Insofar as this argument rests *solely* upon the corporate broker/officer's *right to control* the employee/salesperson, the Ninth Circuit considered and accepted it. 258 F. 3d, at 1134–1135. But we must reject it given our determination in Part II that the "right to control" is insufficient by itself, under traditional agency principles, to establish a principal/agent or employer/employee relationship.

B

The Ninth Circuit did not decide whether *other* aspects of the California broker relationship, when added to the "right to control," would, under traditional legal principles and consistent with "the general common law of agency," *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S., at 754 (internal quotation marks omitted), establish the necessary relationship. But in the absence of consideration of that matter by the Court of Appeals, we shall not consider it. See *Pennsylva-*

nia Dept. of Corrections v. *Yeskey*, 524 U. S. 206, 212–213 (1998) ("'Where issues [were not] considered by the Court of Appeals, this Court will not ordinarily consider them'" (quoting *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 147, n. 2 (1970))).

Respondents also point out that, when traditional vicarious liability principles impose liability upon a corporation, the corporation's liability may be imputed to the corporation's owner in an appropriate case through a "'piercing of the corporate veil.'" *United States* v. *Bestfoods*, 524 U. S. 51, 63, n. 9 (1998) (quoting *United States* v. *Cordova Chemical Co. of Michigan*, 113 F. 3d 572, 580 (CA6 1997)). The Court of Appeals, however, did not decide the application of "veil piercing" in this matter either. It falls outside the scope of the question presented on certiorari. And we shall not here consider it.

The Ninth Circuit nonetheless remains free on remand to determine whether these questions were properly raised and, if so, to consider them.

* * *

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.

Syllabus

FEDERAL COMMUNICATIONS COMMISSION *v.* NEXTWAVE PERSONAL COMMUNICATIONS INC. ET AL.

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

No. 01–653. Argued October 8, 2002—Decided January 27, 2003*

Pursuant to provisions of the Communications Act of 1934 authorizing the Federal Communications Commission (FCC) to award spectrum licenses to small businesses through competitive bidding, and to allow them to pay for the licenses in installments, the FCC auctioned off certain broadband personal communications services licenses to respondents (hereinafter NextWave). NextWave made a down payment on the purchase price, signed promissory notes for the balance, and executed agreements giving the FCC a first lien on, and security interest in, NextWave's rights and interest in the licenses, which recited that they were conditioned upon the full and timely payment of all monies due the FCC, and that failure to comply with this condition would result in their automatic cancellation. NextWave eventually filed for Chapter 11 bankruptcy protection and suspended payments to all creditors, including the FCC, pending confirmation of its reorganization plan. The FCC objected to the plan, asserting that NextWave's licenses had been canceled automatically when the company missed its first payment deadline, and announced that NextWave's licenses were available for auction. The Bankruptcy Court invalidated the cancellation of the licenses as a violation of various Bankruptcy Code provisions, but the Second Circuit reversed, holding that exclusive jurisdiction to review the FCC's regulatory action lay in the courts of appeals. After the FCC denied NextWave's petition for reconsideration of the license cancellation, the District of Columbia Circuit held that the cancellation violated 11 U. S. C. § 525(a), which provides: "[A] governmental unit may not . . . revoke . . . a license . . . to . . . a debtor . . . solely because such . . . debtor . . . has not paid a debt that is dischargeable in the case."

Held: Section 525 prohibits the FCC from revoking licenses held by a bankruptcy debtor upon the debtor's failure to make timely payments to the FCC for purchase of the licenses. It is undisputed that the FCC

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*Together with No. 01–657, *Arctic Slope Regional Corp. et al.* v. *NextWave Personal Communications Inc. et al.*, also on certiorari to the same court.

is a "governmental unit" that has "revoke[d]" a "license," and that NextWave is a "debtor" under the Bankruptcy Act. Pp. 301–308.

(a) The Court rejects petitioners' argument that the FCC did not revoke NextWave's licenses "solely because" of nonpayment under § 525(a). The fact that the FCC had a valid regulatory motive for its action is irrelevant. Section 525 means nothing more or less than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation, whatever the agency's ultimate motive may be. Pp. 301–302.

(b) The FCC's contention that regulatory conditions like full and timely payment are not properly classified as "debts" under § 525(a) fails. Under the Bankruptcy Code, "debt" means "liability on a claim," § 101(12), and "claim," in turn, includes any "right to payment," § 101(5)(A). The plain meaning of a "right to payment" is nothing more nor less than an enforceable obligation, regardless of the Government's objectives in imposing the obligation. *E. g., Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 559. Also rejected is petitioners' argument that NextWave's obligations are not "dischargeable" under § 525(a) because it is beyond the bankruptcy courts' jurisdictional authority to alter or modify regulatory obligations. Dischargeability is not tied to the existence of such authority. The Bankruptcy Code states that confirmation of a reorganization plan discharges the debtor from *any debt* that arose before the confirmation date, 11 U. S. C. § 1141(d)(1)(A), and the only debts it excepts from that prescription are those described in § 523, see § 1141(d)(2). *Ohio* v. *Kovacs*, 469 U. S. 274, 278. Petitioners' contention that the D. C. Circuit has no power to modify or discharge a debt is irrelevant to whether that court can set aside agency action that violates § 525, which is all that it did when it prevented the FCC from canceling licenses because of failure to pay debts dischargeable by bankruptcy courts. Pp. 302–304.

(c) Finally, this Court's interpretation of § 525 does not, as petitioners contend, create a conflict with the Communications Act by obstructing the functioning of that Act's auction provisions. Nothing in those provisions demands that cancellation be the sanction for failure to make agreed-upon periodic payments or even requires the FCC to permit payment to be made over time. What petitioners describe as a conflict boils down to nothing more than a policy preference on the FCC's part for (1) selling licenses on credit and (2) canceling licenses rather than asserting security interests when there is a default. Such administrative preferences cannot be the basis for denying NextWave rights provided by a law's plain terms. P. 304.

254 F. 3d 130, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined, and in which STEVENS, J., joined as to Parts I and II. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 308. BREYER, J., filed a dissenting opinion, *post*, p. 310.

Acting Solicitor General Clement argued the cause for petitioner Federal Communications Commission in No. 01–653. With him on the briefs were *Deputy Solicitor General Wallace*, *Jeffrey A. Lamken*, *William Kanter*, *Jacob M. Lewis*, *John A. Rogovin*, *Daniel M. Armstrong*, and *Joel Marcus*. *Jonathan S. Franklin* argued the cause for petitioners Arctic Slope Regional Corp. et al. in No. 01–657. With him on the briefs was *Lorane F. Hebert*.

Donald B. Verrilli, Jr., argued the cause for respondents in both cases. With him on the briefs were *Ian Heath Gershengorn*, *William M. Hohengarten*, *Thomas G. Hungar*, *Douglas R. Cox*, *Miguel A. Estrada*, *G. Eric Brunstad, Jr.*, and *Deborah L. Schrier-Rape*.

Laurence H. Tribe argued the cause and filed a brief for Creditors NextWave Communications, Inc., as *amici curiae* urging affirmance. With him on the brief were *Charles Fried* and *Elizabeth Warren*.†

JUSTICE SCALIA delivered the opinion of the Court.

In these cases, we decide whether § 525 of the Bankruptcy Code, 11 U. S. C. § 525, prohibits the Federal Communications Commission (FCC or Commission) from revoking licenses held by a debtor in bankruptcy upon the debtor's failure to make timely payments owed to the Commission for purchase of the licenses.

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†Briefs of *amici curiae* urging affirmance were filed for Airadigm Communications, Inc., by *Richard P. Bress* and *James F. Rogers;* for Urban Comm-North Carolina, Inc., et al. by *Charles J. Cooper, David H. Thompson, Preben Jensen*, and *Charles E. Simpson;* for Professor Kathryn R. Heidt, *pro se;* and for Senator Patrick Leahy et al. by *Walter Dellinger* and *Jonathan D. Hacker*.

I

In 1993, Congress amended the Communications Act of 1934 to authorize the FCC to award spectrum licenses "through a system of competitive bidding." 48 Stat. 1085, as amended, 107 Stat. 387, 47 U. S. C. § 309(j)(1). It directed the Commission to "promot[e] economic opportunity and competition" and "avoi[d] excessive concentration of licenses" by "disseminating licenses among a wide variety of applications, including small businesses [and] rural telephone companies." § 309(j)(3)(B). In order to achieve this goal, Congress directed the FCC to "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments . . . or other schedules or methods . . . ." § 309(j)(4)(A).

The FCC decided to award licenses for broadband personal communications services through simultaneous, multiple-round auctions. *In re Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 9 FCC Rcd. 2348, ¶¶ 54, 68 (1994). In accordance with §§ 309(j)(3)(B) and (4)(A), it restricted participation in two of the six auction blocks (Blocks "C" and "F") to small businesses and other designated entities with total assets and revenues below certain levels, and it allowed the successful bidders in these two blocks to pay in installments over the term of the license. 47 CFR § 24.709(a)(1) (1997).

Respondents NextWave Personal Communications, Inc., and NextWave Power Partners, Inc. (both wholly owned subsidiaries of NextWave Telecom, Inc., and hereinafter jointly referred to as respondent NextWave), participated, respectively, in the FCC's "C-Block" and "F-Block" auctions. NextWave was awarded 63 C-Block licenses on winning bids totaling approximately $4.74 billion, and 27 F-Block licenses on winning bids of approximately $123 million. In accordance with FCC regulations, NextWave made a downpayment on the purchase price, signed promissory notes for the balance, and executed security agreements that the FCC per-

fected by filing under the Uniform Commercial Code. The security agreements gave the Commission a first "lien on and continuing security interest in all of the Debtor's rights and interest in [each] License." Security Agreement between NextWave and FCC ¶ 1 (Jan. 3, 1997), 2 App. to Pet. for Cert. 402a. In addition, the licenses recited that they were "conditioned upon the full and timely payment of all monies due pursuant to . . . the terms of the Commission's installment plan as set forth in the Note and Security Agreement executed by the licensee," and that "[f]ailure to comply with this condition will result in the automatic cancellation of this authorization." Radio Station Authorization for Broadband PCS (issued to NextWave Jan. 3, 1997), 2 App. to Pet. for Cert. 388a.

After the C-Block and F-Block licenses were awarded, several successful bidders, including NextWave, experienced difficulty obtaining financing for their operations and petitioned the Commission to restructure their installment-payment obligations. See 12 FCC Rcd. 16436, ¶ 11 (1997). The Commission suspended the installment payments, 12 FCC Rcd. 17325 (1997); 13 FCC Rcd. 1286 (1997), and adopted several options that allowed C-Block licensees to surrender some or all of their licenses for full or partial forgiveness of their outstanding debt. See 12 FCC Rcd. 16436, ¶ 6; 13 FCC Rcd. 8345 (1998). It set a deadline of June 8, 1998, for licensees to elect a restructuring option, and of October 29, 1998, as the last date to resume installment payments. 13 FCC Rcd. 7413 (1998).

On June 8, 1998, after failing to obtain stays of the election deadline from the Commission or the Court of Appeals for the District of Columbia Circuit, NextWave filed for Chapter 11 bankruptcy protection in New York. See *In re NextWave Personal Communications, Inc.*, 235 B. R. 263, 267 (Bkrtcy. Ct. SDNY 1998). It suspended payments to all creditors, including the FCC, pending confirmation of a reorganization plan. NextWave initiated an adversary proceed-

ing in the Bankruptcy Court, alleging that its $4.74 billion indebtedness on the C-Block licenses was avoidable as a "fraudulent conveyance" under § 544 of the Bankruptcy Code, 11 U. S. C. § 544, because, by the time the Commission actually conveyed the licenses, their value had declined from approximately $4.74 billion to less than $1 billion. The Bankruptcy Court agreed[1]—ruling in effect that the company could keep its C-Block licenses for the reduced price of $1.02 billion—and the District Court affirmed. *NextWave Personal Communications, Inc.* v. *FCC*, 241 B. R. 311, 318–319 (SDNY 1999). The Court of Appeals for the Second Circuit reversed, holding that, although the Bankruptcy Court might have jurisdiction over NextWave's underlying debts to the FCC, it could not change the conditions attached to NextWave's licenses. *In re NextWave Personal Communications, Inc.*, 200 F. 3d 43, 55–56 (1999) *(per curiam)*. The Second Circuit also held that since, under FCC regulations, "NextWave's obligation attached upon the close of the auction," there had been no fraudulent conveyance by the FCC acting in its capacity as creditor. *Id.*, at 58.

Following the Second Circuit's decision, NextWave prepared a plan of reorganization that envisioned payment of a single lump sum to satisfy the entire remaining $4.3 billion obligation for purchase of the C-Block licenses, including interest and late fees. The FCC objected to the plan, asserting that NextWave's licenses had been canceled automatically when the company missed its first payment deadline in October 1998. The Commission simultaneously announced that NextWave's licenses were "available for auction under the automatic cancellation provisions" of the FCC's regulations. *Public Notice, Auction of C and F Block Broadband PCS Licenses*, 15 FCC Rcd. 693 (2000). NextWave sought

[1] We do not reach the merits of the determination that the licenses should be valued as of the time they were conveyed, rather than as of the time NextWave won the auction entitling it to conveyance.

emergency relief in the Bankruptcy Court, which declared the FCC's cancellation of respondent's licenses "null and void" as a violation of various provisions of the Bankruptcy Code. *In re NextWave Personal Communications, Inc.*, 244 B. R. 253, 257–258 (Bkrtcy. Ct. SDNY 2000). Once again, the Court of Appeals for the Second Circuit reversed. *In re Federal Communications Commission,* 217 F. 3d 125 (2000). Granting the FCC's petition for a writ of mandamus, the Second Circuit held that "[e]xclusive jurisdiction to review the FCC's regulatory action lies in the courts of appeals" under 47 U. S. C. § 402, and that since the reauction decision was regulatory, proclaiming it to be arbitrary was "outside the jurisdiction of the bankruptcy court." 217 F. 3d, at 139, 136. The Second Circuit noted, however, that "NextWave remains free to pursue its challenge to the FCC's regulatory acts." *Id.*, at 140.

NextWave filed a petition with the FCC seeking reconsideration of the license cancellation, denial of which is the gravamen of the cases at bar. *In the Matter of Public Notice DA 00–49 Auction of C and F Block Broadband PCS Licenses, Order on Reconsideration,* 15 FCC Rcd. 17500 (2000). NextWave appealed that denial to the Court of Appeals for the D. C. Circuit pursuant to 47 U. S. C. § 402(b), asserting that the cancellation was arbitrary and capricious, and contrary to law, in violation of the Administrative Procedure Act, 5 U. S. C. § 706, and the Bankruptcy Code. The Court of Appeals agreed, holding that the FCC's cancellation of NextWave's licenses violated 11 U. S. C. § 525: "Applying the fundamental principle that federal agencies must obey all federal laws, not just those they administer, we conclude that the Commission violated the provision of the Bankruptcy Code that prohibits governmental entities from revoking debtors' licenses solely for failure to pay debts dischargeable in bankruptcy." 254 F. 3d 130, 133 (2001). We granted certiorari. 535 U. S. 904 (2002).

II

The Administrative Procedure Act requires federal courts to set aside federal agency action that is "not in accordance with law," 5 U. S. C. § 706(2)(A)—which means, of course, *any* law, and not merely those laws that the agency itself is charged with administering. See, *e. g.*, *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U. S. 402, 413–414 (1971) ("In all cases agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements"). Respondent contends, and the Court of Appeals for the D. C. Circuit held, that the FCC's revocation of its licenses was not in accordance with § 525 of the Bankruptcy Code.

Section 525(a) provides, in relevant part:

> "[A] governmental unit may not . . . revoke . . . a license . . . to . . . a person that is . . . a debtor under this title . . . solely because such . . . debtor . . . has not paid a debt that is dischargeable in the case under this title . . . ."[2]

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[2] The full text of 11 U. S. C. § 525(a) reads as follows:

"Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled 'An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,' approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."

No one disputes that the Commission is a "governmental unit" that has "revoke[d]" a "license," nor that NextWave is a "debtor" under the Bankruptcy Act. Petitioners argue, however, that the FCC did not revoke respondent's licenses "solely because" of nonpayment, and that, in any event, NextWave's obligations are not "dischargeable" "debt[s]" within the meaning of the Bankruptcy Code. They also argue that a contrary interpretation would unnecessarily bring § 525 into conflict with the Communications Act. We find none of these contentions persuasive, and discuss them in turn.

A

The FCC has not denied that the proximate cause for its cancellation of the licenses was NextWave's failure to make the payments that were due. It contends, however, that § 525 does not apply because the FCC had a "valid regulatory motive" for the cancellation. Brief for Petitioners Arctic Slope Regional Corp. et al. 19; see Brief for Petitioner FCC 17. In our view, that factor is irrelevant. When the statute refers to failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among the other causes whose presence can preclude application of the prohibition, the governmental unit's *motive* in effecting the cancellation. Such a reading would deprive § 525 of all force. It is hard to imagine a situation in which a governmental unit would not have some further motive behind the cancellation—assuring the financial solvency of the licensed entity, *e. g.*, *Perez* v. *Campbell*, 402 U. S. 637 (1971); *In re The Bible Speaks*, 69 B. R. 368, 374 (Bkrtcy. Ct. Mass. 1987), or punishing lawlessness, *e. g.*, *In re Adams*, 106 B. R. 811, 827 (Bkrtcy. Ct. NJ 1989); *In re Colon*, 102 B. R. 421, 428 (Bkrtcy. Ct. ED Pa. 1989), or even (quite simply) making itself financially whole. Section 525 means nothing more or less than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation—the act or event that triggers the agency's decision to cancel,

whatever the agency's ultimate motive in pulling the trigger may be.

Some may think (and the opponents of § 525 undoubtedly thought) that there *ought* to be an exception for cancellations that have a valid regulatory purpose. Besides the fact that such an exception would consume the rule, it flies in the face of the fact that, where Congress has intended to provide regulatory exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly, rather than by a device so subtle as denominating a motive a cause. There are, for example, regulatory exemptions from the Bankruptcy Code's automatic stay provisions. 11 U. S. C. § 362(b)(4). And even § 525(a) itself contains explicit exemptions for certain Agriculture Department programs, see n. 2, *supra.* These latter exceptions would be entirely superfluous if we were to read § 525 as the Commission proposes—which means, of course, that such a reading must be rejected. See *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 35–36 (1992).

B

Petitioners contend that NextWave's license obligations to the Commission are not "debt[s] that [are] dischargeable" in bankruptcy. 11 U. S. C. § 525(a). First, the FCC argues that "regulatory conditions like the full and timely payment condition are not properly classified as 'debts' " under the Bankruptcy Code. Brief for Petitioner FCC 33. In its view, the "financial nature of a condition" on a license "does not convert that condition into a debt." *Ibid.* This is nothing more than a retooling of petitioners' recurrent theme that "regulatory conditions" should be exempt from § 525. No matter how the Commission casts it, the argument loses. Under the Bankruptcy Code, "debt" means "liability on a claim," 11 U. S. C. § 101(12), and "claim," in turn, includes any "right to payment," § 101(5)(A). We have said that "[c]laim" has "the broadest available definition," *Johnson* v. *Home State Bank*, 501 U. S. 78, 83 (1991), and have held that the

"plain meaning of a 'right to payment' is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation," *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 559 (1990). See also *Ohio* v. *Kovacs*, 469 U. S. 274 (1985). In short, a debt is a debt, even when the obligation to pay it is also a regulatory condition.

Petitioners argue that respondent's obligations are not "dischargeable" in bankruptcy because it is beyond the jurisdictional authority of bankruptcy courts to alter or modify regulatory obligations. Brief for Petitioners Arctic Slope Regional Corp. et al. 28–29; Brief for Petitioner FCC 30–31. Dischargeability, however, is not tied to the existence of such authority. A preconfirmation debt is dischargeable unless it falls within an express exception to discharge. Subsection 1141(d) of the Bankruptcy Code states that, except as otherwise provided therein, the "confirmation of a plan [of reorganization] . . . discharges the debtor from *any debt* that arose before the date of such confirmation," 11 U. S. C. § 1141(d)(1)(A) (emphasis added), and the only debts it excepts from that prescription are those described in § 523, see § 1141(d)(2). Thus, "[e]xcept for the nine kinds of debts saved from discharge by 11 U. S. C. § 523(a), a discharge in bankruptcy discharges the debtor *from all debts that arose before bankruptcy.* § 727(b)." *Kovacs*, *supra*, at 278 (emphasis added).

Artistically symmetrical with petitioners' contention that the Bankruptcy Court has no power to alter regulatory obligations is their contention that the D. C. Circuit has no power to modify or discharge a debt. See Brief for Petitioner FCC 31–32; Brief for Petitioner Arctic Slope Regional Corp. et al. 32, n. 9. Just as the former is irrelevant to whether the Bankruptcy Court can discharge a debt, so also the latter is irrelevant to whether the D. C. Circuit can set aside agency action that violates § 525. That court did not seek to modify or discharge the debt, but merely prevented the FCC from

violating § 525 by canceling licenses because of failure to pay debts dischargeable by bankruptcy courts.

C

Finally, our interpretation of § 525 does not create any conflict with the Communications Act. It does not, as petitioners contend, obstruct the functioning of the auction provisions of 47 U. S. C. § 309(j), since nothing in those provisions demands that cancellation be the sanction for failure to make agreed-upon periodic payments. Indeed, nothing in those provisions even requires the Commission to permit payment to be made over time, rather than leaving it to impecunious bidders to finance the full purchase price with private lenders. What petitioners describe as a conflict boils down to nothing more than a policy preference on the FCC's part for (1) selling licenses on credit and (2) canceling licenses rather than asserting security interests in licenses when there is a default. Such administrative preferences cannot be the basis for denying respondent rights provided by the plain terms of a law. "'[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.'" *J. E. M. Ag Supply, Inc.* v. *Pioneer Hi-Bred International, Inc.*, 534 U. S. 124, 143–144 (2001) (quoting *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974)). There being no inherent conflict between § 525 and the Communications Act, "we can plainly regard each statute as effective." *J. E. M.*, *supra*, at 144. And since § 525 circumscribes the Commission's permissible action, the revocation of NextWave's licenses is not in accordance with law. See 5 U. S. C. § 706.

III*

The dissent finds it "dangerous . . . to rely exclusively upon the literal meaning of a statute's words," *post*, at 311 (opinion

*JUSTICE STEVENS does not join this Part.

of BREYER, J.). Instead, it determines, in splendid isolation from that language,[3] the *purpose* of the statute, which it takes to be "to forbid discrimination against those who are, or were, in bankruptcy and, more generally, to prohibit governmental action that would undercut the 'fresh start' that is bankruptcy's promise," *post*, at 313. It deduces these language-trumping "purposes" from the most inconclusive of indications. First, the ambiguous title of § 525(a), "Protection against discriminatory treatment," *ibid.* This, of course, could as well refer to discrimination against *impending* bankruptcy, aka insolvency. Second, its perception that the other prohibitions of § 525(a) apply only to acts "done solely for bankruptcy-related reasons." *Ibid.* We do not share that perception. For example, the prohibition immediately preceding the one at issue here forbids adverse government action taken because the debtor "has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge." That seems to us clearly tied to insolvency alone (plus the mere fact of subsequent or contemporaneous bankruptcy), and does not require some additional motivation based on bankruptcy. The dissent's third indication of "purpose" consists of the ever-available snippets of legislative history, *post*, at 314–315.

The dissent does eventually get to the statutory text at issue here: Step two of its analysis is to ask what interpretation of that text could possibly fulfill its posited "purposes."[4]

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[3] The portion of the dissenting opinion that deduces the statute's purposes, Part II, *post*, at 313–315, contains no discussion of the portion of § 525(a) at issue here.

[4] The second of the purposes, by the way—prohibiting government action that "would undercut the 'fresh start' that is bankruptcy's promise," *post*, at 313—plays no real role in the dissent's analysis, if indeed such a circular criterion could ever play a role in any analysis. The whole issue before us can be described as asking what the Bankruptcy Code's promise of a "fresh start" consists of. Rather than reframing the question, our interpretation concretely accords a "fresh start" where the dissent would

"One obvious way," the dissent concludes, "is to interpret the relevant phrase, 'solely because' of nonpayment of 'a debt that is dischargeable,' as requiring something more than a purely factual connection . . . . The statute's words are open to the interpretation that they require a certain relationship between (1) the *dischargeability* of the debt and (2) the decision to revoke the license." *Post*, at 316. To demonstrate that "openness," the dissent gives the example of a "rule telling apartment owners that they cannot refuse to rent 'solely because a family has children who are adopted.'" *Post*, at 319. Such a rule, it says quite correctly, is most reasonably read as making the adoptive nature of the children part of the prohibited motivation. But the example differs radically from the cases before us in two respects: (1) because an adopted child is the exception rather than the rule, and (2) because the class of children other than adopted children is surely not a disfavored one. In the cases before us, by contrast, the descriptive clause describes the rule rather than the exception. (As the dissent acknowledges, "virtually all debts" are dischargeable, *post*, at 310.) And the debts that do not fall within the rule (nondischargeable debts) are clearly disfavored by the Bankruptcy Code. To posit a text similar to the one before us, the dissent should have envisioned a rule that prohibited refusal to rent "solely because a family has children who are no more than normally destructive." Would the "no-more-than-normal-destructiveness" of the children be a necessary part of the apartment owner's motivation before he is in violation of the rule? That is to say, must he refuse to rent specifically *because* the children are no more than normally destructive? Of course not. The provision is most reasonably read as establishing an *exception* to the prohibition, rather than adding a motivation requirement: The owner *may* refuse to rent to families with destructive children. And the same is obvi-

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not—where there is revocation of a license solely because of a bankrupt's failure to pay dischargeable debts.

ously true here: The government *may* take action that is otherwise forbidden when the debt in question is one of the disfavored class that is nondischargeable.

In addition to distorting the text of the provision, the dissent's interpretation renders the provision superfluous. The purpose of "forbid[ding] discrimination against those who are, or were, in bankruptcy," *post*, at 313, is already explicitly achieved by *another* portion of § 525(a), which prohibits termination of a license "solely because [the] bankrupt or debtor *is or has been . . . a bankrupt or debtor* under the Bankruptcy Act." 11 U. S. C. § 525(a) (emphasis added). The dissent would have us believe that the language "solely because [the] bankrupt or debtor . . . has not paid a debt that is dischargeable" merely achieves the very same objective through inappropriate language. We think Congress meant what it said: The government is not to revoke a bankruptcy debtor's license solely because of a failure to pay his debts.

The dissent makes much of the "serious anomaly" that would arise from permitting "every car salesman, every residential home developer, every appliance company [to] threaten repossession of its product if a buyer does not pay," but denying that power to the government alone, *post*, at 312. It is by no means clear than any anomaly exists. The car salesman, residential home developer, etc., can obtain repossession of his product only (as the dissent acknowledges) "if [he] has taken a security interest in the product," *ibid.* It is neither clear that a private party *can* take and enforce a security interest in an FCC license, see, *e. g.*, *In re Cheskey*, 9 FCC Rcd. 986, ¶ 8 (1994), nor that the FCC *cannot.* (As we described in our statement of facts, the FCC purported to take such a security interest in the present cases. What is at issue, however, is not the enforcement of that interest in the bankruptcy process,[5] but rather elimination of the li-

[5] The FCC initially participated in the bankruptcy proceedings as a creditor. See, *e. g.*, *In re NextWave Personal Communications, Inc.*, 235

censes through the regulatory step of "revoking" them—action that the statute specifically forbids.) In any event, if there is an anomaly it is one that has been created by Congress—a state of affairs the dissent does not think intolerable, since its own disposition creates the anomaly of allowing the government to reclaim its property by means other than the enforcement of a security interest, but not permitting private individuals to do so.

* * *

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

Affirmed.

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

Because these are such close cases, it seems appropriate to identify the considerations that have persuaded me to join the majority. When I first read 11 U. S. C. § 525(a), I thought it was not intended to apply to cases in which the licensor was also a creditor, but rather, as JUSTICE BREYER persuasively argues, was merely intended to protect the debtor from discriminatory license terminations. I remain persuaded that that is the principal purpose of the provision. It is significant, however, that the first words in the section describe three exceptions for statutes, one of which contains language remarkably similar to the language in the security

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B. R. 314 (Bkrtcy. Ct. SDNY 1999). However, after NextWave prepared a plan of reorganization the FCC asserted that the licenses had been automatically canceled and gave notice of its intent to reauction them. The Second Circuit treated this decision as "regulatory," and thus outside the scope of the Bankruptcy Court's jurisdiction. See *In re Federal Communications Commission*, 217 F. 3d 125, 139, 136 (2000). The decision by the D. C. Circuit recognized and seemingly approved that distinction. See 254 F. 3d 130, 143 (2001).

agreements executed by respondents in these cases.[1] Those exceptions introduce an ambiguity.

On the one hand, they indicate that Congress did not intend § 525(a) to limit the Executive's right to condition the retaining of a federal license on considerations similar to those on which a creditor relies. The reasons for making an exception for licenses to deal in perishable commodities would seem equally applicable to licenses to exploit the public airwaves. Indeed, there is probably a greater public interest in allowing prompt cancellation of spectrum licenses than of commodities dealers' licenses because of the importance of facilitating development of the broadcast spectrum.

On the other hand, the exceptions demonstrate that Congress realized the breadth of the language in § 525(a). Rather than make a categorical exception that would have accommodated not only the three cases expressly covered by the text, but also cases like the ones before the Court today, the drafters retained the broad language that the Court finds decisive. That language endorses a general rule that gives priority to the debtor's interest in preserving control of an important asset of the estate pending the completion of bankruptcy proceedings.

I do not believe that the application of that general rule to these cases will be unfair to the Federal Communications Commission either as a regulator or as a creditor. If the

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[1] The Perishable Agricultural Commodities Act, 1930, provides, in part:

"Whenever an applicant has paid the prescribed fee the Secretary . . . shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant . . . , but said license *shall automatically terminate . . . unless the licensee . . . pays the applicable renewal fee[:]* [T]he license of any licensee *shall terminate upon said licensee . . . being discharged as a bankrupt*, unless the Secretary finds upon examination of the circumstances of such bankruptcy . . . that such circumstances do not warrant termination." 7 U. S. C. § 499d(a) (emphases added).

The security agreements between NextWave and the Government provided that "the License shall be automatically canceled" upon NextWave's defaulting on an installment payment. 2 App. to Pet. for Cert. 409a.

bankrupt licensee is unable to fulfill other conditions of its license, the regulator may cancel the licenses for reasons that are not covered by § 525(a).[2] Moreover, given the fact that the Commission has a secured interest in the license, if the licensee can obtain the financing that will enable it to perform its obligations in full, the debt will ultimately be paid. In sum, even though I agree with JUSTICE BREYER's view that the literal text of a statute is not always a sufficient basis for determining the actual intent of Congress, in these cases I believe it does produce the correct answer.

JUSTICE BREYER, dissenting.

The statute before us says that the Government may not revoke a license it has granted to a person who has entered bankruptcy "*solely because [the bankruptcy debtor] . . . has not paid a debt that is dischargeable in [bankruptcy].*" 11 U. S. C. § 525(a) (emphasis added). The question is whether the italicized words apply when a government creditor, having taken a security interest in a license sold on an installment plan, revokes the license not because the debtor has gone bankrupt, but simply because the debtor has failed to pay an installment as promised. The majority answers this question in the affirmative. It says that the italicized words mean

> "*nothing more or less* than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation—the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive . . . may be." *Ante*, at 301–302 (emphasis added).

Hence, if the debt is a dischargeable debt (as virtually all debts are), then once a debtor enters bankruptcy, the Gov-

[2] The Senate Report explained that § 525(a) "does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capital rules, if applied nondiscriminatorily." S. Rep. No. 95–989, p. 81 (1978).

ernment cannot revoke the license—irrespective of the Government's motive. That, the majority writes, is what the statute says. Just read it. End of the matter.

It is dangerous, however, in any actual case of interpretive difficulty to rely exclusively upon the literal meaning of a statute's words divorced from consideration of the statute's purpose. That is so for a linguistic reason. General terms as used on particular occasions often carry with them implied restrictions as to scope. "Tell all customers that . . ." does not refer to every customer of every business in the world. That is also so for a legal reason. Law as expressed in statutes seeks to regulate human activities in particular ways. Law is tied to life. And a failure to understand how a statutory rule is so tied can undermine the very human activity that the law seeks to benefit. "No vehicles in the park" does not refer to baby strollers or even to tanks used as part of a war memorial. See Fuller, Positivism and Fidelity to Law—A Reply to Professor Hart, 71 Harv. L. Rev. 630, 663 (1958).

I

In my view this statute's language is similarly restricted. A restriction implicitly limits its scope to instances in which a government's license revocation is related to the fact that the debt was dischargeable in bankruptcy. Where the fact of bankruptcy is totally irrelevant, where the government's action has no relation either through purpose or effect to bankruptcy or to dischargeability, where consequently the revocation cannot threaten the bankruptcy-related concerns that underlie the statute, then the revocation falls outside the statute's scope. Congress intended this kind of exception to its general language in order to avoid consequences which, if not "absurd," are at least at odds with the statute's basic objectives. Cf. *United States* v. *Kirby*, 7 Wall. 482, 486 (1869) ("All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence").

The Court's literal interpretation of the statute threatens to create a serious anomaly. It seems to say that a government cannot *ever* enforce a lien on property that it has sold on the installment plan as long as (1) the property is a license, (2) the buyer has gone bankrupt, and (3) the government wants the license back solely because the buyer did not pay for it. After all, in such circumstances, it is virtually *always* the case that the buyer will not have paid a debt that is in fact "dischargeable," and that "event" alone will have "trigger[ed]" the government's "decision" to revoke the license. See *supra,* at 310.

Yet every private commercial seller, every car salesman, every residential home developer, every appliance company can threaten repossession of its product if a buyer does not pay—at least if the seller has taken a security interest in the product. *E. g., Farrey* v. *Sanderfoot,* 500 U. S. 291, 297 (1991). Why should the government (state or federal), and the government alone, find it impossible to repossess a product, namely, a license, when the buyer fails to make installment payments?

The facts of these cases illustrate the problem. NextWave bought broadcasting licenses from the Federal Communications Commission (FCC) for just under $5 billion. It promised to pay the money under an installment plan. It agreed that its possession of the licenses was "conditioned upon full and timely payment," that failure to pay would result in the licenses' "automatic cancellation," that the Government would maintain a "fi[r]st lien on and continuing security interest" in the licenses, and that it would "not dispute" the Government's "rights as a secured party." 2 App. to Pet. for Cert. 388a, 392a–393a, 402a–404a. NextWave never made its installment payments. It entered bankruptcy. And the FCC declared the licenses void for nonpayment. In a word, the FCC sought to repossess the licenses so that it could auction the related spectrum space to other users. As I have said, the law ordinarily permits a

private creditor who has taken an appropriate security interest to repossess property for nonpayment—even after bankruptcy. See, *e. g.*, *Farrey*, *supra*, at 297. Would Congress want to say that the Government cannot *ever* do the same?

II

To read the statute in light of its purpose makes clear that Congress did not want *always* to prohibit the Government from enforcing a sales contract through repossession. Nor did it intend an interpretation so broad that it would threaten unnecessarily to deprive the American public of the full value of public assets that it owns. Cf. 47 U. S. C. §§ 309(j)(1)–(4) (authorization of spectrum auctions with restrictions "to protect the public interest"). Congress instead intended the statute's language to implement a less far-reaching, but more understandable, objective. It sought to forbid discrimination against those who are, or were, in bankruptcy and, more generally, to prohibit governmental action that would undercut the "fresh start" that is bankruptcy's promise, see *Grogan* v. *Garner*, 498 U. S. 279, 286 (1991). Where that kind of government activity is at issue, the statute forbids revocation. But where that kind of activity is not at issue, there is no reason to apply the statute's prohibition.

The statute's title, its language, and its history all support this description of its purpose. The title says, "Protection against discriminatory treatment." 11 U. S. C. § 525(a). The statute's text, read as a whole, see Appendix, *infra*, strongly suggests that bankruptcy-related discrimination is the evil at which the statute aims. A phrase is sometimes best known by the statutory company it keeps. See, *e. g.*, *Gutierrez* v. *Ada*, 528 U. S. 250, 255 (2000). And here the relevant phrase is immersed within language that describes a host of acts, including discharges from employment and refusals to hire, and forbids them only where done solely for bankruptcy-related reasons, *i. e.*, a person's being a bank-

ruptcy debtor, having been a bankruptcy debtor, or having become insolvent before or during a bankruptcy case. See Appendix, *infra.*

The statute's history demonstrates an antidiscriminatory objective. House and Senate Reports describe the relevant section, § 525(a), as "the anti-discrimination provision." S. Rep. No. 95–989, p. 81 (1978) (hereinafter S. Rep.); H. R. Rep. No. 95–595, p. 367 (1977) (hereinafter H. R. Rep.). The House Report says that its "purpose . . . is to prevent an automatic reaction against an individual for availing himself of the protection of the bankruptcy laws." *Id.*, at 165. In describing related provisions, the House Report refers to an intent to prevent the Government from punishing "bankruptcy per se" by denying "a license, grant, or entitlement" on the premise "that bankruptcy itself is sufficiently repre-[h]ensible behavior to warrant . . . a sanction." *Id.*, at 286. It adds that the overriding goal was "to eliminate any special treatment of bankruptcy" in laws of the United States. *Id.*, at 285.

In addition, the House and Senate Reports describe § 525(a) as an effort to codify this Court's holding in *Perez* v. *Campbell*, 402 U. S. 637 (1971). S. Rep., at 81; H. R. Rep., at 165, 366. The Court there held that the federal Bankruptcy Act pre-empted a state statute that suspended the driver's license of any person who had not paid a motor accident judgment (explicitly including a judgment discharged by bankruptcy). 402 U. S., at 652. The Court rested its holding on the theory that the state statute's failure to exempt discharged debts "frustrate[d] the full effectiveness" of the Bankruptcy Act's promise of a "fresh start." *Ibid.*

Further, the House Report, along with House floor statements, assured the enacting Congress that the statute would allow "governmental units to pursue appropriate regulatory policies." *E. g.*, H. R. Rep., at 165. It was not meant "to interfere with legitimate regulatory objectives," 123 Cong.

Rec. 35673 (1977) (remarks of Rep. Butler); see also H. R. Rep., at 286. It might seem fair to count as one such objective the receipt by the public of payment for a partially regulated public asset that the public, through the Government, has sold. Cf. 47 U. S. C. § 309(j)(3)(C).

Finally, nothing in the statute's history suggests any congressional effort to prevent Government repossession where bankruptcy-related concerns, such as "fresh start" concerns, have no relevance. The statute does contain exemptions, but those exemptions, for agriculture-related licenses, are not to the contrary. 11 U. S. C. § 525(a). As I read the statute, the exemptions simply excuse, say, meatpacking licensing agencies from a rule that would otherwise forbid taking negative account of, say, a prior bankruptcy (say, by providing that a license "shall terminate upon [the] licensee . . . being discharged as a bankrupt," 7 U. S. C. § 499d(a); see *ante,* at 308–309, and n. 1 (STEVENS, J., concurring in part and concurring in judgment)). To read them as permitting consideration of former bankruptcies where the food supply is at issue makes them understandable. To read them as support for the majority's view—as authorizing the Government to revoke meatpacking, but only meatpacking, licenses upon nonpayment—makes little sense to me.

The statute's purposes, then, are to stop bankruptcy-related discrimination and to prevent government licensors from interfering with the "fresh start" that bankruptcy promises, but not to prevent government debt-collection efforts where these concerns are not present. Unlike the majority, I believe it possible to interpret the statute's language in a manner consistent with these purposes.

III

The provision's congressional authors expected courts to look for interpretations that would conform the statute's language to its purposes. They conceded that the provision's

"ultimate contours" were "not yet clear." H. R. Rep., at 165. But they said that the courts would determine "the extent of the discrimination that is contrary to bankruptcy policy." *Ibid.* And they thought the courts would do so "in pursuit of sound bankruptcy policy." S. Rep., at 81; H. R. Rep., at 367.

One obvious way to carry out this interpretive mandate is to interpret the relevant phrase, "solely because" of nonpayment of "a debt that is dischargeable," as requiring something more than a purely factual connection, *i. e.*, something more than a causal connection between a government's revocation of a license and nonpayment of a debt that is, merely *in fact*, dischargeable. The statute's words are open to the interpretation that they require a certain relationship between (1) the *dischargeability* of the debt and (2) the decision to revoke the license. That necessary relationship would exist if the debt's dischargeability played a role in the government's decisionmaking through motivation—if, for example, the fact that the debt was dischargeable (or the fact of bankruptcy, etc.) *mattered* to the FCC. The necessary relationship would also exist if the government's revocation interfered in some significant way with bankruptcy's effort to provide a "fresh start." But otherwise, where the fact of dischargeability is irrelevant, where it has nothing to do with the government's decision either by way of purpose or effect, the government's license revocation would fall outside the scope of the provision.

This interpretation is consistent with the statute's language. It simply takes account not only of the statutory language's factual content—*i. e.*, its reference to a debt that is *in fact* dischargeable—but also its intended significance. A debt's dischargeability cannot simply be a coincidence but must bear a meaningful relation to the prohibited government action. Cf. *Staples* v. *United States*, 511 U. S. 600, 619–620 (1994) (statute forbidding possession of a machinegun requires not simply that the gun, *in fact*, discharge auto-

matically, but also that the defendant know that the gun meets the statute's description).

This interpretation is consistent with several lower court efforts to interpret the statute. See, *e. g.*, *Toth* v. *Michigan State Housing Development Authority*, 136 F. 3d 477, 480 (CA6), cert. denied, 524 U. S. 954 (1998); *In re Exquisito Services, Inc.*, 823 F. 2d 151, 153 (CA5 1987); *In re Smith*, 259 B. R. 901, 906 (Bkrtcy. App. Panel CA8 2001). But see *In re Stoltz*, 315 F. 3d 80 (CA2 2002). It would avoid handicapping government debt collection efforts in ways that Congress did not intend. It would further the statute's basic purpose—preventing discrimination and preserving bankruptcy's "fresh start." And it would avoid interfering with legitimate public debt collection efforts. An individual could not generally promise to pay for a public asset, go into bankruptcy, avoid the payment obligation, and keep the asset—even in the absence of the evils at which this statute is aimed.

This statutory approach is far from novel. Well over a century ago, the Court interpreted a statute that forbade knowing and willful obstruction of the mail as containing an implicit exception permitting a local sheriff to arrest a mail carrier. *United States* v. *Kirby*, 7 Wall., at 485–487. Justice Field, writing for the Court, pointed out that centuries earlier the British courts had interpreted a statute making it a felony to break out of prison not to extend to a breakout when the prison is on fire. *Id.*, at 487. And, similarly, the courts of Bologna had interpreted a statute punishing severely "'whoever drew blood in the streets'" not to extend to a surgeon faced with an emergency. *Ibid.* "[C]ommon sense," wrote Justice Field, "accepts" these rulings. *Ibid.* So too does common sense suggest that we should interpret the present statute not to extend to revocation efforts that are no more closely related to the statute's objectives than are baby strollers to the "vehicles" forbidden entry into the park. See *supra*, at 311.

IV

The majority responds to my concerns in several ways. First, it characterizes the dissent in a slightly exaggerated manner, stating, for example, that I have "determine[d]" the statute's "*purpose*" in "splendid isolation from [its] language," that bankruptcy's "fresh start" objective "plays no real role in [my] analysis," and that that "criterion" is, in any event, "circular." *Ante*, at 305, and n. 4. I would refer the reader to Parts II and III above (which contain considerable discussion of statutory language and statutory history) and, in particular, to the discussion of *Perez*, a decision that relied upon the "fresh start" objective in a way that the statute seeks to codify and that my own suggested interpretation of the statute incorporates. In my view, the language of the statute taken as a whole—including its "insolvency" language, *ante*, at 305—strongly suggests that Congress intended bankruptcy to have something to do with the forbidden government action. See Appendix, *infra*.

Second, the majority argues that my interpretation makes the statute's "dischargeable debt" provision "superfluous," given language forbidding revocation because a person "'is . . . a [bankruptcy] debtor.'" *Ante*, at 307 (emphasis deleted). I do not see how that is so. A refusal to issue, say, a new dry cleaner's license "solely because" a bankruptcy debtor once failed to pay for other dry cleaner's licenses (now discharged debts) is not necessarily the same as a refusal to issue a new license "solely because" the debtor "has been . . . a bankrupt," 11 U. S. C. § 525(a). And the statute's separate provisions simply cover this differentiated bankruptcy-related waterfront.

Third, the majority returns to the statutory language prohibiting a government from revoking a license "solely because [the bankrupt debtor] . . . has not paid a debt that is dischargeable," *ibid.* *Ante*, at 306–307. To my ear, this language suggests a possible connection between dischargeability and revocation. I have tried to test my linguistic

sense through analogy, imagining, for example, a regulatory rule telling apartment owners that they cannot refuse to rent "solely because a family has children who are adopted" (which, notwithstanding the majority's complex discussion of "destructive children," *ante*, at 306, seems linguistically comparable). This language suggests the need for a connection between (1) the fact of adoption and (2) the refusal (thereby exempting an owner who accepts no children at all). Is it not, like the statute's language, at least *open* to such an interpretation? That is the linguistic point. It opens the door to a consideration of context and purpose—which, *in any event*, are relevant to determine whether the statute contains an implicit exemption, see *supra*, at 317.

Finally, the majority points out that, in the wake of a complicated procedural history, these cases are now not about "enforcement of [a security] interest in" the Bankruptcy Court. *Ante*, at 307, and n. 5. But the majority's interpretation certainly seems to cover that circumstance, and more. Under the majority's understanding, a government creditor who seeks to enforce a security interest in a broadcasting license (after the bankruptcy stay has been lifted or after bankruptcy proceedings terminate) would be seeking to repossess, and thereby to revoke, that license "solely because" of the debtor's failure to pay a "dischargeable" debt. After all, under such circumstances, "failure to pay" the debt that is *in fact* dischargeable would "alone be the proximate cause" of the government's action. *Ante*, at 301. It is "the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive." *Ante*, at 301–302.

If I am right about this, the majority's interpretation means that private creditors, say, car dealers, can enforce security interests in the goods that they sell, namely, cars, but governments cannot enforce security interests in items that they sell, namely, licenses. (Whether a private party can "take and enforce a security interest in an FCC license," *ante*, at 307, is beside this particular point.)

The matter is important. *In these very cases,* the Government sought to retake its licenses through enforcement of its security interest. See, *e. g.*, *In re NextWave Personal Communications, Inc.*, 241 B. R. 311, 321 (SDNY) (affirming denial of the Government's motion for relief from the automatic stay under 11 U. S. C. § 362(d)(1)), rev'd, 200 F. 3d 43, 45–46, 62, and n. 1 (CA2 1999) (reversing that affirmance). The Court of Appeals for the District of Columbia Circuit indicated that the FCC's revocation of the licenses, see *ante*, at 307–308, is properly characterized as foreclosure on collateral—*i. e.*, as an attempt to enforce liens. See 254 F. 3d 130, 151 (CADC 2001); cf. *In re Kingsport Ventures, L. P.*, 251 B. R. 841, 844 (ED Tenn. 2000) (private party's power to use "revocation" to enforce interest in a license). But because the Court of Appeals rested its decision on § 525(a) grounds, it did not determine whether bankruptcy's automatic stay blocked such foreclosure. 254 F. 3d, at 148–149, 156. See generally 11 U. S. C. §§ 362(a)(4)–(5) (staying enforcement of liens). Consequently, if the majority believes that § 525(a) permits the Government to enforce security interests in its license collateral, it should remand these cases, permitting the Court of Appeals to decide whether other bankruptcy provisions (such as § 362) block the Government's efforts to do so.

I emphasize the point because the majority is right in thinking that lien-enforcement difficulties create much of the anomaly I fear—in effect divorcing the majority's reading from the statute's basic purpose. Is it not reasonable to ask for reassurance on this point, to ask what future interpretive corollary might rescue government lien-enforcement efforts from the difficulties the majority's statutory interpretation seems to create? Unless there is an answer to this question, the majority's opinion holds out no more than a slim *possibility* of ad hoc adjustment based upon future need. And such an adjustment, if it comes at all, may amount to mere judicial

fiat—used to rescue an interpretation that rests too heavily upon linguistic deduction and too little upon human purpose.

V

Because the Government, asserting its security interest, may be able to show that revocation here bears no relationship to the debt's "dischargeability" and would not otherwise improperly interfere with the Code's "fresh start" objective, I would vacate the Court of Appeals' judgment and remand for further proceedings. I respectfully dissent.

APPENDIX TO OPINION OF BREYER, J.

The full text of 11 U. S. C. § 525(a) states:

> "Protection against discriminatory treatment
>
> "(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled 'An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,' approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."

Syllabus

MILLER-EL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION

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

No. 01–7662. Argued October 16, 2002—Decided February 25, 2003

When Dallas County prosecutors used peremptory strikes to exclude 10 of the 11 African-Americans eligible to serve on the jury at petitioner's capital murder trial, he moved to strike the jury on the ground that the exclusions violated equal protection. Petitioner presented extensive evidence supporting his motion at a pretrial hearing, but the trial judge denied relief, finding no evidence indicating a systematic exclusion of blacks, as was required by the then-controlling precedent, *Swain* v. *Alabama*, 380 U. S. 202. Subsequently, the jury found petitioner guilty, and he was sentenced to death. While his appeal was pending, this Court established, in *Batson* v. *Kentucky*, 476 U. S. 79, a three-part process for evaluating equal protection claims such as petitioner's. Upon remand from the Texas Court of Criminal Appeals for new findings in light of *Batson*, the original trial court held a hearing at which it admitted all the *Swain* hearing evidence and took further evidence, but concluded that petitioner failed to satisfy step one of *Batson* because the evidence did not even raise an inference of racial motivation in the State's use of peremptory challenges. The court also determined that the State would have prevailed on steps two and three because the prosecutors had proffered credible, race-neutral explanations for the African-Americans excluded—*i. e.*, their reluctance to assess, or reservations concerning, imposition of the death penalty—such that petitioner could not prove purposeful discrimination. After petitioner's direct appeal and state habeas petitions were denied, he filed a federal habeas petition under 28 U. S. C. § 2254, raising a *Batson* claim and other issues. The Federal District Court denied relief in deference to the state courts' acceptance of the prosecutors' race-neutral justifications for striking the potential jurors, and subsequently denied petitioner's § 2253 application for a certificate of appealability (COA). The Fifth Circuit noted that a COA will issue "only if the applicant has made a substantial showing of the denial of a constitutional right," § 2253(c)(2); reasoned that a petitioner must make such a "substantial showing" under the standard set forth in *Slack* v. *McDaniel*, 529 U. S. 473; de-

clared that § 2254(d)(2) required it to presume state-court findings correct unless it determined that the findings would result in a decision which was unreasonable in light of clear and convincing evidence; and applied this framework to deny petitioner a COA.

Petitioner's extensive evidence concerning the jury selection procedures falls into two broad categories. First, he presented, at the pretrial *Swain* hearing, testimony and other evidence relating to a pattern and practice of race discrimination in the *voir dire* by the Dallas County District Attorney's Office, including a 1976 policy by that office to exclude minorities from jury service that was available at least to one of petitioner's prosecutors. Second, two years later, petitioner presented, to the same state trial court, evidence that directly related to the prosecutors' conduct in his case, including a comparative analysis of the venire members demonstrating that African-Americans were excluded from petitioner's jury in a ratio significantly higher than Caucasians; evidence that, during *voir dire*, the prosecution questioned venire members in a racially disparate fashion as to their death penalty views, their willingness to serve on a capital case, and their willingness to impose the minimum sentence for murder, and that responses disclosing reluctance or hesitation to impose capital punishment or a minimum sentence were cited as a justification for striking potential jurors; and the prosecution's use of a Texas criminal procedure practice known as "jury shuffling" to assure that white venire members were selected in preference to African-Americans.

Held: The Fifth Circuit should have issued a COA to review the District Court's denial of habeas relief to petitioner. Pp. 335–348.

(a) Before a prisoner seeking postconviction relief under § 2254 may appeal a district court's denial or dismissal of the petition, he must first seek and obtain a COA from a circuit justice or judge, § 2253. This is a jurisdictional prerequisite. A COA will issue only if § 2253's requirements have been satisfied. When a habeas applicant seeks a COA, the court of appeals should limit its examination to a threshold inquiry into the underlying merit of his claims. *E. g., Slack*, 529 U. S., at 481. This inquiry does not require full consideration of the factual or legal bases supporting the claims. Consistent with this Court's precedent and the statutory text, the prisoner need only demonstrate "a substantial showing of the denial of a constitutional right." § 2253(c)(2). He satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his case or that the issues presented were adequate to deserve encouragement to proceed further. *E. g., id.*, at 484. He need not convince a judge, or, for that matter, three judges, that he will prevail, but must demonstrate that reasonable

jurists would find the district court's assessment of the constitutional claims debatable or wrong, *ibid.* Pp. 335–338.

(b) Since petitioner's claim rests on a *Batson* violation, resolution of his COA application requires a preliminary, though not definitive, consideration of the three-step *Batson* framework. The State now concedes that petitioner satisfied step one, and petitioner acknowledges that the State proceeded through step two by proffering facially race-neutral explanations for these strikes. The critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persuasiveness of the prosecutor's justification for his peremptory strike. *E. g.*, *Purkett* v. *Elem*, 514 U. S. 765, 768 *(per curiam)*. The issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy. A plurality of this Court has concluded in the direct review context that a state court's finding of the absence of discriminatory intent is "a pure issue of fact" that is accorded significant deference and will not be overturned unless clearly erroneous. *Hernandez* v. *New York*, 500 U. S. 352, 364–365. Where 28 U. S. C. § 2254 applies, the Court's habeas jurisprudence embodies this deference. Factual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary, § 2254(e)(1), and a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding, § 2254(d)(2). Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review. In the context of the threshold examination in this *Batson* claim, it can suffice to support the issuance of a COA to adduce evidence demonstrating that, despite the neutral explanation of the prosecution, the peremptory strikes in the final analysis were race based. Cf. *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133. Pp. 338–341.

(c) On review of the record at this stage, this Court concludes that the District Court did not give full consideration to the substantial evidence petitioner put forth in support of the prima facie case. Instead, it accepted without question the state court's evaluation of the demeanor of the prosecutors and jurors in petitioner's trial. The Fifth Circuit evaluated petitioner's COA application in the same way. In ruling that petitioner's claim lacked sufficient merit to justify appellate proceedings, that court recited the requirements for granting a writ under § 2254,

Syllabus

which it interpreted as requiring petitioner to prove that the state-court decision was objectively unreasonable by clear and convincing evidence.

This was too demanding a standard because it incorrectly merged the clear and convincing evidence standard of § 2254(e)(1), which pertains only to state-court determinations of factual issues, rather than decisions, and the unreasonableness requirement of § 2254(d)(2), which relates to the state-court decision and applies to the granting of habeas relief. More fundamentally, the court was incorrect in not inquiring whether a "substantial showing of the denial of a constitutional right" had been proved, as § 2253(c)(2) requires. The question is the debatability of the underlying constitutional claim, not the resolution of that debate. In this case, debate as to whether the prosecution acted with a race-based reason when striking prospective jurors was raised by the statistical evidence demonstrating that 91% of the eligible African-Americans were excluded from petitioner's venire; by the fact that the state trial court had no occasion to judge the credibility of the prosecutors' contemporaneous race-neutral justifications at the time of the pretrial hearing because the Court's equal protection jurisprudence then, dictated by *Swain*, did not require it; by the fact that three of the State's proffered race-neutral rationales for striking African-Americans—ambivalence about the death penalty, hesitancy to vote to execute defendants capable of being rehabilitated, and the jurors' own family history of criminality—pertained just as well to some white jurors who were not challenged and who did serve on the jury; by the evidence of the State's use of racially disparate questioning; and by the state courts' failure to consider the evidence as to the prosecution's use of the jury shuffle and the historical evidence of racial discrimination by the Dallas County District Attorney's Office. Pp. 341–348.

261 F. 3d 445, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion, *post*, p. 348. THOMAS, J., filed a dissenting opinion, *post*, p. 354.

Seth P. Waxman argued the cause for petitioner. With him on the briefs were *David W. Ogden*, *Robin A. Lenhardt*, *Jim Marcus*, and *Andrew Hammel*.

Gena Bunn, Assistant Attorney General of Texas, argued the cause for respondent. With her on the brief were *John Cornyn*, Attorney General, *Howard G. Baldwin, Jr.*, First Assistant Attorney General, *Michael T. McCaul*, Deputy

Attorney General, and *Edward L. Marshall*, *Charles A. Palmer*, and *Deni S. Garcia*, Assistant Attorneys General.*

JUSTICE KENNEDY delivered the opinion of the Court.

In this case we once again examine when a state prisoner can appeal the denial or dismissal of his petition for writ of habeas corpus. In 1986 two Dallas County assistant district attorneys used peremptory strikes to exclude 10 of the 11 African-Americans eligible to serve on the jury which tried petitioner Thomas Joe Miller-El. During the ensuing 17 years, petitioner has been unsuccessful in establishing, in either state or federal court, that his conviction and death sentence must be vacated because the jury selection procedures violated the Equal Protection Clause and our holding in *Batson* v. *Kentucky*, 476 U. S. 79 (1986). The claim now arises in a federal petition for writ of habeas corpus. The procedures and standards applicable in the case are controlled by the habeas corpus statute codified at Title 28, chapter 153, of the United States Code, most recently amended in a substantial manner by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In the interest of finality AEDPA constrains a federal court's power to disturb state-court convictions.

The United States District Court for the Northern District of Texas, after reviewing the evidence before the state trial court, determined that petitioner failed to establish a constitutional violation warranting habeas relief. The Court of Appeals for the Fifth Circuit, concluding there was insufficient merit to the case, denied a certificate of appeal-

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*Briefs of *amici curiae* urging reversal were filed for Former Prosecutors and Judges by *Elisabeth Semel*, *Charles D. Weisselberg*, and *Carter G. Phillips;* and for the NAACP Legal Defense and Educational Fund, Inc., et al. by *Elaine R. Jones*, *Norman J. Chachkin*, *James L. Cott*, *George Kendall*, *Deborah Fins*, and *Miriam Gohara*.

ability (COA) from the District Court's determination. The COA denial is the subject of our decision.

At issue here are the standards AEDPA imposes before a court of appeals may issue a COA to review a denial of habeas relief in the district court. Congress mandates that a prisoner seeking postconviction relief under 28 U. S. C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, petitioner must first seek and obtain a COA. In resolving this case we decide again that when a habeas applicant seeks permission to initiate appellate review of the dismissal of his petition, the court of appeals should limit its examination to a threshold inquiry into the underlying merit of his claims. *Slack* v. *McDaniel*, 529 U. S. 473, 481 (2000). Consistent with our prior precedent and the text of the habeas corpus statute, we reiterate that a prisoner seeking a COA need only demonstrate "a substantial showing of the denial of a constitutional right." 28 U. S. C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. *Slack*, *supra*, at 484. Applying these principles to petitioner's application, we conclude a COA should have issued.

I

A

Petitioner, his wife Dorothy Miller-El, and one Kenneth Flowers robbed a Holiday Inn in Dallas, Texas. They emptied the cash drawers and ordered two employees, Doug Walker and Donald Hall, to lie on the floor. Walker and Hall were gagged with strips of fabric, and their hands and feet were bound. Petitioner asked Flowers if he was going to kill Walker and Hall. When Flowers hesitated or refused,

petitioner shot Walker twice in the back and shot Hall in the side. Walker died from his wounds.

The State indicted petitioner for capital murder. He pleaded not guilty, and jury selection took place during five weeks in February and March 1986. When *voir dire* had been concluded, petitioner moved to strike the jury on the grounds that the prosecution had violated the Equal Protection Clause of the Fourteenth Amendment by excluding African-Americans through the use of peremptory challenges. Petitioner's trial occurred before our decision in *Batson*, *supra*, and *Swain* v. *Alabama*, 380 U. S. 202 (1965), was then the controlling precedent. As *Swain* required, petitioner sought to show that the prosecution's conduct was part of a larger pattern of discrimination aimed at excluding African-Americans from jury service. In a pretrial hearing held on March 12, 1986, petitioner presented extensive evidence in support of his motion. The trial judge, however, found "no evidence . . . that indicated any systematic exclusion of blacks as a matter of policy by the District Attorney's office; while it may have been done by individual prosecutors in individual cases." App. 813. The state court then denied petitioner's motion to strike the jury. *Ibid.* Twelve days later, the jury found petitioner guilty; and the trial court sentenced him to death.

Petitioner appealed to the Texas Court of Criminal Appeals. While the appeal was pending, on April 30, 1986, the Court decided *Batson* v. *Kentucky* and established its three-part process for evaluating claims that a prosecutor used peremptory challenges in violation of the Equal Protection Clause. First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race. 476 U. S., at 96–97. Second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question. *Id.*, at 97–98. Third, in light of the parties' submissions, the trial court must deter-

mine whether the defendant has shown purposeful discrimination. *Id.*, at 98.

After acknowledging petitioner had established an inference of purposeful discrimination, the Texas Court of Criminal Appeals remanded the case for new findings in light of *Batson*. *Miller-El* v. *State*, 748 S. W. 2d 459 (1988). A post-trial hearing was held on May 10, 1988 (a little over two years after petitioner's jury had been empaneled). There, the original trial court admitted all the evidence presented at the *Swain* hearing and further evidence and testimony from the attorneys in the original trial. App. 843–844.

On January 13, 1989, the trial court concluded that petitioner's evidence failed to satisfy step one of *Batson* because it "did not even raise an inference of racial motivation in the use of the state's peremptory challenges" to support a prima facie case. App. 876. Notwithstanding this conclusion, the state court determined that the State would have prevailed on steps two and three because the prosecutors had offered credible, race-neutral explanations for each African-American excluded. The court further found "no disparate prosecutorial examination of any of the veniremen in question" and "that the primary reasons for the exercise of the challenges against each of the veniremen in question [was] their reluctance to assess or reservations concerning the imposition of the death penalty." *Id.*, at 878. There was no discussion of petitioner's other evidence.

The Texas Court of Criminal Appeals denied petitioner's appeal, and we denied certiorari. *Miller-El* v. *Texas*, 510 U. S. 831 (1993). Petitioner's state habeas proceedings fared no better, and he was denied relief by the Texas Court of Criminal Appeals.

Petitioner filed a petition for writ of habeas corpus in Federal District Court pursuant to 28 U. S. C. § 2254. Although petitioner raised four issues, we concern ourselves here with only petitioner's jury selection claim premised on *Batson*. The Federal Magistrate Judge who considered the merits

was troubled by some of the evidence adduced in the state-court proceedings. He, nevertheless, recommended, in deference to the state courts' acceptance of the prosecutors' race-neutral justifications for striking the potential jurors, that petitioner be denied relief. The United States District Court adopted the recommendation. Pursuant to § 2253, petitioner sought a COA from the District Court, and the application was denied. Petitioner renewed his request to the Court of Appeals for the Fifth Circuit, and it also denied the COA.

The Court of Appeals noted that, under controlling habeas principles, a COA will issue " 'only if the applicant has made a substantial showing of the denial of a constitutional right.' " *Miller-El* v. *Johnson*, 261 F. 3d 445, 449 (2001) (quoting 28 U. S. C. § 2253(c)(2)). Citing our decision in *Slack* v. *McDaniel*, 529 U. S. 473 (2000), the court reasoned that "[a] petitioner makes a 'substantial showing' when he demonstrates that his petition involves issues which are debatable among jurists of reason, that another court could resolve the issues differently, or that the issues are adequate to deserve encouragement to proceed further." 261 F. 3d, at 449. The Court of Appeals also interjected the requirements of 28 U. S. C. § 2254 into the COA determination: "As an appellate court reviewing a federal habeas petition, we are required by § 2254(d)(2) to presume the state court findings correct unless we determine that the findings result in a decision which is unreasonable in light of the evidence presented. And the unreasonableness, if any, must be established by clear and convincing evidence. *See* 28 U. S. C. § 2254(e)(1)." 261 F. 3d, at 451.

Applying this framework to petitioner's COA application, the Court of Appeals concluded "that the state court's findings are not unreasonable and that Miller-El has failed to present clear and convincing evidence to the contrary." *Id.*, at 452. As a consequence, the court "determined that the state court's adjudication neither resulted in a decision that

was unreasonable in light of the evidence presented nor resulted in a decision contrary to clearly established federal law as determined by the Supreme Court," *ibid.;* and it denied petitioner's request for a COA. We granted certiorari. 534 U. S. 1122 (2002).

B

While a COA ruling is not the occasion for a ruling on the merit of petitioner's claim, our determination to reverse the Court of Appeals counsels us to explain in some detail the extensive evidence concerning the jury selection procedures. Petitioner's evidence falls into two broad categories. First, he presented to the state trial court, at a pretrial *Swain* hearing, evidence relating to a pattern and practice of race discrimination in the *voir dire.* Second, two years later, he presented, to the same state court, evidence that directly related to the conduct of the prosecutors in his case. We discuss the latter first.

A comparative analysis of the venire members demonstrates that African-Americans were excluded from petitioner's jury in a ratio significantly higher than Caucasians were. Of the 108 possible jurors reviewed by the prosecution and defense, 20 were African-American. Nine of them were excused for cause or by agreement of the parties. Of the 11 African-American jurors remaining, however, all but 1 were excluded by peremptory strikes exercised by the prosecutors. On this basis 91% of the eligible black jurors were removed by peremptory strikes. In contrast the prosecutors used their peremptory strikes against just 13% (4 out of 31) of the eligible nonblack prospective jurors qualified to serve on petitioner's jury.

These numbers, while relevant, are not petitioner's whole case. During *voir dire,* the prosecution questioned venire members as to their views concerning the death penalty and their willingness to serve on a capital case. Responses that disclosed reluctance or hesitation to impose capital punishment were cited as a justification for striking a potential

juror for cause or by peremptory challenge. *Wainwright* v. *Witt*, 469 U. S. 412 (1985). The evidence suggests, however, that the manner in which members of the venire were questioned varied by race. To the extent a divergence in responses can be attributed to the racially disparate mode of examination, it is relevant to our inquiry.

Most African-Americans (53%, or 8 out of 15) were first given a detailed description of the mechanics of an execution in Texas:

> "[I]f those three [sentencing] questions are answered yes, at some point[,] Thomas Joe Miller-El will be taken to Huntsville, Texas. He will be placed on death row and at some time will be taken to the death house where he will be strapped on a gurney, an IV put into his arm and he will be injected with a substance that will cause his death . . . as the result of the verdict in this case if those three questions are answered yes." App. 215.

Only then were these African-American venire members asked whether they could render a decision leading to a sentence of death. Very few prospective white jurors (6%, or 3 out of 49) were given this preface prior to being asked for their views on capital punishment. Rather, all but three were questioned in vague terms: "Would you share with us . . . your personal feelings, if you could, in your own words how you do feel about the death penalty and capital punishment and secondly, do you feel you could serve on this type of a jury and actually render a decision that would result in the death of the Defendant in this case based on the evidence?" *Id.*, at 506.

There was an even more pronounced difference, on the apparent basis of race, in the manner the prosecutors questioned members of the venire about their willingness to impose the minimum sentence for murder. Under Texas law at the time of petitioner's trial, an unwillingness to do so warranted removal for cause. *Huffman* v. *State*, 450 S. W.

2d 858, 861 (Tex. Crim. App. 1970), vacated in part, 408 U. S. 936 (1972). This strategy normally is used by the defense to weed out pro-state members of the venire, but, ironically, the prosecution employed it here. The prosecutors first identified the statutory minimum sentence of five years' imprisonment to 34 out of 36 (94%) white venire members, and only then asked: "If you hear a case, to your way of thinking [that] calls for and warrants and justifies five years, you'll give it?" App. 509. In contrast, only one out of eight (12.5%) African-American prospective jurors were informed of the statutory minimum before being asked what minimum sentence they would impose. The typical questioning of the other seven black jurors was as follows:

> "[Prosecutor]: Now, the maximum sentence for [murder] . . . is life under the law. Can you give me an idea of just your personal feelings what you feel a minimum sentence should be for the offense of murder the way I've set it out for you?
>
> "[Juror]: Well, to me that's almost like it's premeditated. But you said they don't have a premeditated statute here in Texas.
>
> . . . . .
>
> "[Prosecutor]: Again, we're not talking about self-defense or accident or insanity or killing in the heat of passion or anything like that. We're talking about the knowing—
>
> "[Juror]: I know you said the minimum. The minimum amount that I would say would be at least twenty years." *Id.*, at 226–227.

Furthermore, petitioner points to the prosecution's use of a Texas criminal procedure practice known as jury shuffling. This practice permits parties to rearrange the order in which members of the venire are examined so as to increase the likelihood that visually preferable venire members will be moved forward and empaneled. With no information about

the prospective jurors other than their appearance, the party requesting the procedure literally shuffles the juror cards, and the venire members are then reseated in the new order. Tex. Code Crim. Proc. Ann., Art. 35.11 (Vernon Supp. 2003). Shuffling affects jury composition because any prospective jurors not questioned during *voir dire* are dismissed at the end of the week, and a new panel of jurors appears the following week. So jurors who are shuffled to the back of the panel are less likely to be questioned or to serve.

On at least two occasions the prosecution requested shuffles when there were a predominant number of African-Americans in the front of the panel. On yet another occasion the prosecutors complained about the purported inadequacy of the card shuffle by a defense lawyer but lodged a formal objection only after the postshuffle panel composition revealed that African-American prospective jurors had been moved forward.

Next, we turn to the pattern and practice evidence adduced at petitioner's pretrial *Swain* hearing. Petitioner subpoenaed a number of current and former Dallas County assistant district attorneys, judges, and others who had observed firsthand the prosecution's conduct during jury selection over a number of years. Although most of the witnesses denied the existence of a systematic policy to exclude African-Americans, others disagreed. A Dallas County district judge testified that, when he had served in the District Attorney's Office from the late-1950's to early-1960's, his superior warned him that he would be fired if he permitted any African-Americans to serve on a jury. Similarly, another Dallas County district judge and former assistant district attorney from 1976 to 1978 testified that he believed the office had a systematic policy of excluding African-Americans from juries.

Of more importance, the defense presented evidence that the District Attorney's Office had adopted a formal policy to exclude minorities from jury service. A 1963 circular by the

District Attorney's Office instructed its prosecutors to exercise peremptory strikes against minorities: "'Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or how well educated.'" App. 710. A manual entitled "Jury Selection in a Criminal Case" was distributed to prosecutors. It contained an article authored by a former prosecutor (and later a judge) under the direction of his superiors in the District Attorney's Office, outlining the reasoning for excluding minorities from jury service. Although the manual was written in 1968, it remained in circulation until 1976, if not later, and was available at least to one of the prosecutors in Miller-El's trial. *Id.*, at 749, 774, 783.

Some testimony casts doubt on the State's claim that these practices had been discontinued before petitioner's trial. For example, a judge testified that, in 1985, he had to exclude a prosecutor from trying cases in his courtroom for race-based discrimination in jury selection. Other testimony indicated that the State, by its own admission, once requested a jury shuffle in order to reduce the number of African-Americans in the venire. *Id.*, at 788. Concerns over the exclusion of African-Americans by the District Attorney's Office were echoed by Dallas County's Chief Public Defender.

This evidence had been presented by petitioner, in support of his *Batson* claim, to the state and federal courts that denied him relief. It is against this background that we examine whether petitioner's case should be heard by the Court of Appeals.

II

A

As mandated by federal statute, a state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U. S. C. § 2253. Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and

obtain a COA from a circuit justice or judge. This is a jurisdictional prerequisite because the COA statute mandates that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals. . . ." § 2253(c)(1). As a result, until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners.

A COA will issue only if the requirements of § 2253 have been satisfied. "The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal." *Slack*, 529 U. S., at 482; *Hohn* v. *United States*, 524 U. S. 236, 248 (1998). As the Court of Appeals observed in this case, § 2253(c) permits the issuance of a COA only where a petitioner has made a "substantial showing of the denial of a constitutional right." In *Slack*, *supra*, at 483, we recognized that Congress codified our standard, announced in *Barefoot* v. *Estelle*, 463 U. S. 880 (1983), for determining what constitutes the requisite showing. Under the controlling standard, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" 529 U. S., at 484 (quoting *Barefoot*, *supra*, at 893, n. 4).

The COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits. We look to the District Court's application of AEDPA to petitioner's constitutional claims and ask whether that resolution was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it. When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based

on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

To that end, our opinion in *Slack* held that a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in *Slack* would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief. After all, when a COA is sought, the whole premise is that the prisoner "'has already failed in that endeavor.'" *Barefoot*, *supra*, at 893, n. 4.

Our holding should not be misconstrued as directing that a COA always must issue. Statutes such as AEDPA have placed more, rather than fewer, restrictions on the power of federal courts to grant writs of habeas corpus to state prisoners. *Duncan* v. *Walker*, 533 U. S. 167, 178 (2001) ("'AEDPA's purpose [is] to further the principles of comity, finality, and federalism'" (quoting *Williams* v. *Taylor*, 529 U. S. 420, 436 (2000))); *Williams* v. *Taylor*, 529 U. S. 362, 399 (2000) (opinion of O'Connor, J.). The concept of a threshold, or gateway, test was not the innovation of AEDPA. Congress established a threshold prerequisite to appealability in 1908, in large part because it was "concerned with the increasing number of frivolous habeas corpus petitions challenging capital sentences which delayed execution pending completion of the appellate process . . . ." *Barefoot*, *supra*, at 892, n. 3. By enacting AEDPA, using the specific standards the Court had elaborated earlier for the threshold test, Congress confirmed the necessity and the requirement of differential treatment for those appeals deserving of attention from those that plainly do not. It follows that issuance of a COA must not be *pro forma* or a matter of course.

A prisoner seeking a COA must prove "'something more than the absence of frivolity'" or the existence of mere "good faith" on his or her part. *Barefoot*, *supra*, at 893. We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As we stated in *Slack*, "[w]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 529 U. S., at 484.

B

Since Miller-El's claim rests on a *Batson* violation, resolution of his COA application requires a preliminary, though not definitive, consideration of the three-step framework mandated by *Batson* and reaffirmed in our later precedents. *E. g.*, *Purkett* v. *Elem*, 514 U. S. 765 (1995) *(per curiam)*; *Hernandez* v. *New York*, 500 U. S. 352 (1991) (plurality opinion). Contrary to the state trial court's ruling on remand, the State now concedes that petitioner, Miller-El, satisfied step one: "[T]here is no dispute that Miller-El presented a prima facie claim" that prosecutors used their peremptory challenges to exclude venire members on the basis of race. Brief for Respondent 32. Petitioner, for his part, acknowledges that the State proceeded through step two by proffering facially race-neutral explanations for these strikes. Under *Batson*, then, the question remaining is step three: whether Miller-El "has carried his burden of proving purposeful discrimination." *Hernandez*, *supra*, at 359.

As we confirmed in *Purkett* v. *Elem*, 514 U. S., at 768, the critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persua-

siveness of the prosecutor's justification for his peremptory strike. At this stage, "implausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination." *Ibid.* In that instance the issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.

In *Hernandez* v. *New York*, a plurality of the Court concluded that a state court's finding of the absence of discriminatory intent is "a pure issue of fact" accorded significant deference:

> "Deference to trial court findings on the issue of discriminatory intent makes particular sense in this context because, as we noted in *Batson*, the finding 'largely will turn on evaluation of credibility.' 476 U. S., at 98, n. 21. In the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed. There will seldom be much evidence bearing on that issue, and the best evidence often will be the demeanor of the attorney who exercises the challenge. As with the state of mind of a juror, evaluation of the prosecutor's state of mind based on demeanor and credibility lies 'peculiarly within a trial judge's province.' *Wainwright* v. *Witt*, 469 U. S. 412, 428 (1985), citing *Patton* v. *Yount*, 467 U. S. 1025, 1038 (1984)." 500 U. S., at 365.

Deference is necessary because a reviewing court, which analyzes only the transcripts from *voir dire*, is not as well positioned as the trial court is to make credibility determinations. "[I]f an appellate court accepts a trial court's finding that a prosecutor's race-neutral explanation for his peremptory challenges should be believed, we fail to see how the

appellate court nevertheless could find discrimination. The credibility of the prosecutor's explanation goes to the heart of the equal protection analysis, and once that has been settled, there seems nothing left to review." *Id.*, at 367.

In the context of direct review, therefore, we have noted that "the trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal" and will not be overturned unless clearly erroneous. *Id.*, at 364. A federal court's collateral review of a state-court decision must be consistent with the respect due state courts in our federal system. Where 28 U. S. C. § 2254 applies, our habeas jurisprudence embodies this deference. Factual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary, § 2254(e)(1), and a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding, § 2254(d)(2); see also *Williams*, 529 U. S., at 399 (opinion of O'Connor, J.).

Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review. Deference does not by definition preclude relief. A federal court can disagree with a state court's credibility determination and, when guided by AEDPA, conclude the decision was unreasonable or that the factual premise was incorrect by clear and convincing evidence. In the context of the threshold examination in this *Batson* claim the issuance of a COA can be supported by any evidence demonstrating that, despite the neutral explanation of the prosecution, the peremptory strikes in the final analysis were race based. It goes without saying that this includes the facts and circumstances that were adduced in support of the prima facie case. Cf. *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133 (2000) (in action under Title VII of the Civil Rights Act of 1964, employee's prima facie case and evidence that employer's

race-neutral response was a pretext can support a finding of purposeful discrimination). Only after a COA is granted will a reviewing court determine whether the trial court's determination of the prosecutor's neutrality with respect to race was objectively unreasonable and has been rebutted by clear and convincing evidence to the contrary. At this stage, however, we only ask whether the District Court's application of AEDPA deference, as stated in §§ 2254(d)(2) and (e)(1), to petitioner's *Batson* claim was debatable amongst jurists of reason.

C

Applying these rules to Miller-El's application, we have no difficulty concluding that a COA should have issued. We conclude, on our review of the record at this stage, that the District Court did not give full consideration to the substantial evidence petitioner put forth in support of the prima facie case. Instead, it accepted without question the state court's evaluation of the demeanor of the prosecutors and jurors in petitioner's trial. The Court of Appeals evaluated Miller-El's application for a COA in the same way. In ruling that petitioner's claim lacked sufficient merit to justify appellate proceedings, the Court of Appeals recited the requirements for granting a writ under § 2254, which it interpreted as requiring petitioner to prove that the state-court decision was objectively unreasonable by clear and convincing evidence.

This was too demanding a standard on more than one level. It was incorrect for the Court of Appeals, when looking at the merits, to merge the independent requirements of §§ 2254(d)(2) and (e)(1). AEDPA does not require petitioner to prove that a decision is objectively unreasonable by clear and convincing evidence. The clear and convincing evidence standard is found in § 2254(e)(1), but that subsection pertains only to state-court determinations of factual issues, rather than decisions. Subsection (d)(2) contains the unreasonable

requirement and applies to the granting of habeas relief rather than to the granting of a COA.

The Court of Appeals, moreover, was incorrect for an even more fundamental reason. Before the issuance of a COA, the Court of Appeals had no jurisdiction to resolve the merits of petitioner's constitutional claims. True, to the extent that the merits of this case will turn on the agreement or disagreement with a state-court factual finding, the clear and convincing evidence and objective unreasonableness standards will apply. At the COA stage, however, a court need not make a definitive inquiry into this matter. As we have said, a COA determination is a separate proceeding, one distinct from the underlying merits. *Slack*, 529 U. S., at 481; *Hohn*, 524 U. S., at 241. The Court of Appeals should have inquired whether a "substantial showing of the denial of a constitutional right" had been proved. Deciding the substance of an appeal in what should only be a threshold inquiry undermines the concept of a COA. The question is the debatability of the underlying constitutional claim, not the resolution of that debate.

In this case, the statistical evidence alone raises some debate as to whether the prosecution acted with a race-based reason when striking prospective jurors. The prosecutors used their peremptory strikes to exclude 91% of the eligible African-American venire members, and only one served on petitioner's jury. In total, 10 of the prosecutors' 14 peremptory strikes were used against African-Americans. Happenstance is unlikely to produce this disparity.

The case for debatability is not weakened when we examine the State's defense of the disparate treatment. The Court of Appeals held that "[t]he presumption of correctness is especially strong, where, as here, the trial court and state habeas court are one and the same." 261 F. 3d, at 449. As we have noted, the trial court held its *Batson* hearing two years after the *voir dire*. While the prosecutors had proffered contemporaneous race-neutral justifications for many

of their peremptory strikes, the state trial court had no occasion to judge the credibility of these explanations at that time because our equal protection jurisprudence then, dictated by *Swain*, did not require it. As a result, the evidence presented to the trial court at the *Batson* hearing was subject to the usual risks of imprecision and distortion from the passage of time.

In this case, three of the State's proffered race-neutral rationales for striking African-American jurors pertained just as well to some white jurors who were not challenged and who did serve on the jury. The prosecutors explained that their peremptory challenges against six African-American potential jurors were based on ambivalence about the death penalty; hesitancy to vote to execute defendants capable of being rehabilitated; and the jurors' own family history of criminality. In rebuttal of the prosecution's explanation, petitioner identified two empaneled white jurors who expressed ambivalence about the death penalty in a manner similar to their African-American counterparts who were the subject of prosecutorial peremptory challenges. One indicated that capital punishment was not appropriate for a first offense, and another stated that it would be "difficult" to impose a death sentence. Similarly, two white jurors expressed hesitation in sentencing to death a defendant who might be rehabilitated; and four white jurors had family members with criminal histories. As a consequence, even though the prosecution's reasons for striking African-American members of the venire appear race neutral, the application of these rationales to the venire might have been selective and based on racial considerations. Whether a comparative juror analysis would demonstrate the prosecutors' rationales to have been pretexts for discrimination is an unnecessary determination at this stage, but the evidence does make debatable the District Court's conclusion that no purposeful discrimination occurred.

We question the Court of Appeals' and state trial court's dismissive and strained interpretation of petitioner's evidence of disparate questioning. 261 F. 3d, at 452 ("The findings of the state court that there was no disparate questioning of the *Batson* jurors . . . [is] fully supported by the record"). Petitioner argues that the prosecutors' sole purpose in using disparate questioning was to elicit responses from the African-American venire members that reflected an opposition to the death penalty or an unwillingness to impose a minimum sentence, either of which justified for-cause challenges by the prosecution under the then-applicable state law. This is more than a remote possibility. Disparate questioning did occur. Petitioner submits that disparate questioning created the appearance of divergent opinions even though the venire members' views on the relevant subject might have been the same. It follows that, if the use of disparate questioning is determined by race at the outset, it is likely a justification for a strike based on the resulting divergent views would be pretextual. In this context the differences in the questions posed by the prosecutors are some evidence of purposeful discrimination. *Batson*, 476 U. S., at 97 ("Similarly, the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges may support or refute an inference of discriminatory purpose").

As a preface to questions about views the prospective jurors held on the death penalty, the prosecution in some instances gave an explicit account of the execution process. Of those prospective jurors who were asked their views on capital punishment, the preface was used for 53% of the African-Americans questioned on the issue but for just 6% of white persons. The State explains the disparity by asserting that a disproportionate number of African-American venire members expressed doubts as to the death penalty on their juror questionnaires. This cannot be accepted without further inquiry, however, for the State's own evidence is in-

consistent with that explanation. By the State's calculations, 10 African-American and 10 white prospective jurors expressed some hesitation about the death penalty on their questionnaires; however, of that group, 7 out of 10 African-Americans and only 2 out of 10 whites were given the explicit description.

There is an even greater disparity along racial lines when we consider disparate questioning concerning minimum punishments. Ninety-four percent of whites were informed of the statutory minimum sentence, compared to only twelve and a half percent of African-Americans. No explanation is proffered for the statistical disparity. *Pierre* v. *Louisiana*, 306 U. S. 354, 361–362 (1939) (" 'The fact that the testimony . . . was not challenged by evidence appropriately direct, cannot be brushed aside.' Had there been evidence obtainable to contradict and disprove the testimony offered by petitioner, it cannot be assumed that the State would have refrained from introducing it" (quoting *Norris* v. *Alabama*, 294 U. S. 587, 594–595 (1935))). Indeed, while petitioner's appeal was pending before the Texas Court of Criminal Appeals, that court found a *Batson* violation where this precise line of disparate questioning on mandatory minimums was employed by one of the same prosecutors who tried the instant case. *Chambers* v. *State*, 784 S. W. 2d 29, 31 (Tex. Crim. App. 1989). It follows, in our view, that a fair interpretation of the record on this threshold examination in the COA analysis is that the prosecutors designed their questions to elicit responses that would justify the removal of African-Americans from the venire. *Batson*, *supra*, at 93 ("Circumstantial evidence of invidious intent may include proof of disproportionate impact. . . . We have observed that under some circumstances proof of discriminatory impact 'may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds' ").

We agree with petitioner that the prosecution's decision to seek a jury shuffle when a predominant number of African-Americans were seated in the front of the panel, along with its decision to delay a formal objection to the defense's shuffle until after the new racial composition was revealed, raise a suspicion that the State sought to exclude African-Americans from the jury. Our concerns are amplified by the fact that the state court also had before it, and apparently ignored, testimony demonstrating that the Dallas County District Attorney's Office had, by its own admission, used this process to manipulate the racial composition of the jury in the past. App. 788 (noting that a prosecutor admitted to requesting a jury shuffle "because a predominant number of the first six, eight or ten jurors were blacks"). Even though the practice of jury shuffling might not be denominated as a *Batson* claim because it does not involve a peremptory challenge, the use of the practice here tends to erode the credibility of the prosecution's assertion that race was not a motivating factor in the jury selection.

Finally, in our threshold examination, we accord some weight to petitioner's historical evidence of racial discrimination by the District Attorney's Office. Evidence presented at the *Swain* hearing indicates that African-Americans almost categorically were excluded from jury service. *Batson*, *supra*, at 94 ("Proof of systematic exclusion from the venire raises an inference of purposeful discrimination because the 'result bespeaks discrimination' "); *Vasquez* v. *Hillery*, 474 U. S. 254, 259 (1986) ("As early as 1942, this Court rejected a contention that absence of blacks on the grand jury was insufficient to support an inference of discrimination, summarily asserting that 'chance or accident could hardly have accounted for the continuous omission of negroes from the grand jury lists for so long a period as sixteen years or more' " (quoting *Hill* v. *Texas*, 316 U. S. 400, 404 (1942))); *Hernandez* v. *Texas*, 347 U. S. 475, 482 (1954) ("But it taxes our credulity to say that mere chance resulted in there being

no members of this class among the over six thousand jurors called in the past 25 years"). Only the Federal Magistrate Judge addressed the import of this evidence in the context of a *Batson* claim; and he found it both unexplained and disturbing. Irrespective of whether the evidence could prove sufficient to support a charge of systematic exclusion of African-Americans, it reveals that the culture of the District Attorney's Office in the past was suffused with bias against African-Americans in jury selection. This evidence, of course, is relevant to the extent it casts doubt on the legitimacy of the motives underlying the State's actions in petitioner's case. Even if we presume at this stage that the prosecutors in Miller-El's case were not part of this culture of discrimination, the evidence suggests they were likely not ignorant of it. Both prosecutors joined the District Attorney's Office when assistant district attorneys received formal training in excluding minorities from juries. The supposition that race was a factor could be reinforced by the fact that the prosecutors marked the race of each prospective juror on their juror cards.

In resolving the equal protection claim against petitioner, the state courts made no mention of either the jury shuffle or the historical record of purposeful discrimination. We adhere to the proposition that a state court need not make detailed findings addressing all the evidence before it. This failure, however, does not diminish its significance. Our concerns here are heightened by the fact that, when presented with this evidence, the state trial court somehow reasoned that there was not even the inference of discrimination to support a prima facie case. This was clear error, and the State declines to defend this particular ruling. "If these general assertions were accepted as rebutting a defendant's prima facie case, the Equal Protection Clause 'would be but a vain and illusory requirement.'" *Batson*, 476 U. S., at 98 (quoting *Norris*, 294 U. S., at 598).

To secure habeas relief, petitioner must demonstrate that a state court's finding of the absence of purposeful discrimination was incorrect by clear and convincing evidence, 28 U. S. C. § 2254(e)(1), and that the corresponding factual determination was "objectively unreasonable" in light of the record before the court. The State represents to us that petitioner will not be able to satisfy his burden. That may or may not be the case. It is not, however, the question before us. The COA inquiry asks only if the District Court's decision was debatable. Our threshold examination convinces us that it was.

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

It is so ordered.

JUSTICE SCALIA, concurring.

I join the Court's opinion, but write separately for two reasons: First, to explain why I believe the Court's willingness to consider the Antiterrorism and Effective Death Penalty Act of 1996's (AEDPA) limits on habeas relief in deciding whether to issue a certificate of appealability (COA) is in accord with the text of 28 U. S. C. § 2253(c). Second, to discuss some of the evidence on the State's side of the case—which, though inadequate (as the Court holds) to make the absence of a claimed violation of *Batson* v. *Kentucky*, 476 U. S. 79 (1986), undebatable, still makes this, in my view, a very close case.

I

Many Court of Appeals decisions have denied applications for a COA only after concluding that the applicant was not entitled to habeas relief on the merits—without even analyzing whether the applicant had made a substantial showing of a denial of a constitutional right. See, *e. g.*, *Kasi* v. *Angelone*, 300 F. 3d 487 (CA4 2002); *Wheat* v. *Johnson*, 238 F. 3d

357 (CA5 2000).* The Court today disapproves this approach, which improperly resolves the merits of the appeal during the COA stage. *Ante*, at 331, 335–338. Less clear from the Court's opinion, however, is why a "circuit justice or judge," in deciding whether to issue a COA, must "look *to the District Court's application of AEDPA* to [a habeas petitioner's] constitutional claims and ask whether *that resolution* was debatable amongst jurists of reason." *Ante*, at 336 (emphasis added). How the district court applied AEDPA has nothing to do with whether a COA applicant has made "a substantial showing of the denial of a constitutional right," as required by 28 U. S. C. § 2253(c)(2), so the AEDPA standard should seemingly have no role in the COA inquiry.

Section 2253(c)(2), however, provides that "[a] certificate of appealability *may issue* . . . *only if* the applicant has made a substantial showing of the denial of a constitutional right." (Emphasis added.) A "substantial showing" *does not entitle* an applicant to a COA; it is a necessary and not a sufficient condition. Nothing in the text of § 2253(c)(2) prohibits a circuit justice or judge from imposing additional requirements, and one such additional requirement has been approved by this Court. See *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) (holding that a habeas petitioner seeking to appeal a district court's denial of habeas relief on procedural grounds must not only make a substantial showing of the denial of a constitutional right but *also* must demonstrate that jurists of reason would find it debatable whether the district court was correct in its procedural ruling).

The Court today imposes another additional requirement: A circuit justice or judge must deny a COA, even when the habeas petitioner has made a substantial showing that his

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*In what can be regarded as a logical development from the error of analyzing a request for a COA like a merits appeal, some courts have simply allowed merits appeals to be taken *without* a COA—in flat contravention of 28 U. S. C. § 2253(c)(1)(A). See, *e. g.*, *Bates* v. *Lee*, 308 F. 3d 411 (CA4 2002).

constitutional rights were violated, if all reasonable jurists would conclude that a substantive provision of the federal habeas statute bars relief. *Ante*, at 336. To give an example, suppose a state prisoner presents a constitutional claim that reasonable jurists might find debatable, but is unable to find any "clearly established" Supreme Court precedent in support of that claim (which was previously rejected on the merits in state-court proceedings). Under the Court's view, a COA must be denied, *even if* the habeas petitioner satisfies the "substantial showing of the denial of a constitutional right" requirement of § 2253(c)(2), because all reasonable jurists would agree that habeas relief is impossible to obtain under § 2254(d). This approach is consonant with *Slack*, in accord with the COA's purpose of preventing meritless habeas appeals, and compatible with the text of § 2253(c), which does not make the "substantial showing of the denial of a constitutional right" a sufficient condition for a COA.

II

In applying the Court's COA standard to petitioner's case, we must ask whether petitioner has made a substantial showing of a *Batson* violation and also whether reasonable jurists could debate petitioner's ability to obtain habeas relief in light of AEDPA. The facts surrounding petitioner's *Batson* claims, when viewed in light of § 2254(e)(1)'s requirement that state-court factual determinations can be overcome only by clear and convincing evidence to the contrary, reveal this to be a close, rather than a clear, case for the granting of a COA.

Petitioner maintains that the following six African-American jurors were victims of racially motivated peremptory strikes: Edwin Rand, Wayman Kennedy, Roderick Bozeman, Billy Jean Fields, Joe Warren, and Carrol Boggess. As to each of them, the State proffered race-neutral explanations for its peremptory challenge. Five were challenged primarily because of their views on imposing the death pen-

alty (Rand, Kennedy, Bozeman, Warren, and Boggess), and one (Fields) was challenged because (among other reasons) his brother had been convicted of drug offenses and served time in prison. By asserting race-neutral reasons for the challenges, the State satisfied step two of *Batson.* See *Purkett* v. *Elem*, 514 U. S. 765, 767–768 (1995) *(per curiam)*. Unless petitioner can make a substantial showing that (*i. e.*, a showing that reasonable jurists could debate whether) the State fraudulently recited these explanations as pretext for race discrimination, he has not satisfied the requirement of § 2253(c)(2). Moreover, because the state court entered a finding of fact that the prosecution's purported reasons for exercising its peremptory challenges were not pretextual, App. 878, a COA should not issue unless that finding can reasonably be thought to be contradicted by clear and convincing evidence. See § 2254(e)(1) ("[A] determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence"). *Ante*, at 336.

The weakness in petitioner's *Batson* claims stems from his difficulty in identifying any unchallenged white venireman similarly situated to the six aforementioned African-American veniremen. Although petitioner claims that two white veniremen, Sandra Hearn and Marie Mazza, expressed views about the death penalty as ambivalent as those expressed by Rand, Kennedy, Bozeman, Warren, and Boggess, the *voir dire* transcripts do not clearly bear that out. Although Hearn initially stated that she thought the death penalty was inappropriate for first-time offenders, she also said, "I do not see any reason why I couldn't sit on a jury when you're imposing a death penalty." App. 694. She further stated that someone who was an extreme child abuser deserved the death penalty, whether or not it was a first-time offense. Reply Brief for Petitioner 14a. Hearn also made pro-prosecution statements about her distaste for criminal

defendants' use of psychiatric testimony to establish incompetency. *Id.*, at 17a. As for Mazza, her stated views on the death penalty were as follows: "It's kind of hard determining somebody's life, whether they live or die, but I feel that is something that is accepted in our courts now and it is something that—a decision that I think I could make one way or the other." App. 519.

Compare those statements with the sentiments expressed by the challenged African-American veniremen. Kennedy supported the death penalty only in cases of mass murder. "Normally I wouldn't say on just the average murder case—I would say no, not the death sentence." *Id.*, at 216. Bozeman supported the death penalty only "if there's no possible way to rehabilitate a person . . . I would say somebody mentally disturbed or something like that or say a Manson type or something like that." *Id.*, at 79. When asked by the prosecutors whether repeated criminal violent conduct would indicate that a person was beyond rehabilitation, Bozeman replied, "No, not really." *Ibid.* Warren refused to give any clear answer regarding his views on the death penalty despite numerous questions from the prosecutors. *Id.*, at 139–140 ("Well, there again, it goes back to the situation, you know, sometimes"); *id.*, at 140. When asked whether the death penalty accomplishes anything, Warren answered, "Yes and no. Sometimes I think it does and sometimes I think it don't *[sic]*. Sometimes you have mixed feelings about things like that." *Ibid.* When asked, "What do you think it accomplishes when you feel it does?," Warren replied, "I don't know." *Ibid.* Boggess referred to the death penalty as "murder," *id.*, at 197, and said, "whether or not I could actually go through with murder—with killing another person or taking another person's life, I just don't know. I'd have trouble with that," *ibid.* Rand is a closer case. His most ambivalent statement was "Can I do this? You know, right now I say I can, but tomorrow I might not." *Id.*, at 161 (internal quotation marks omitted). Later on

Rand did say that he could impose the death penalty as a juror. *Id.*, at 162–164. But Hearn and Mazza (the white jurors who were seated) also said that they could sit on a jury that imposed the death penalty. At most, petitioner has shown that one of these African-American veniremen (Rand) may have been no more ambivalent about the death penalty than white jurors Hearn and Mazza. That perhaps would have been enough to permit the state trial court, deciding the issue *de novo* after observing the demeanor of the prosecutors and the disputed jurors, to find a *Batson* violation. But in a federal habeas case, where a state court has previously entered factfindings that the six African-American jurors were not challenged because of their race, petitioner must provide "clear and convincing evidence" that the state court erred, and, when requesting a COA, must demonstrate that jurists of reason could debate whether this standard was satisfied. *Ante*, at 336.

Fields, the sixth African-American venireman who petitioner claims was challenged because of his race, supported capital punishment. However, his brother had several drug convictions and had served time in prison. App. 124. (Warren and Boggess, two of the African-American veniremen previously discussed, also had relatives with criminal convictions—Warren's brother had been convicted of fraud in relation to food stamps, *id.*, at 153, and Boggess had testified as a defense witness at her nephew's trial for theft, *id.*, at 211, and reported in her questionnaire that some of her cousins had problems with the law, Joint Lodging 43.) Of the four white veniremen who petitioner claims also had relatives with criminal histories and therefore "should have been struck" by the prosecution—three (Noad Vickery, Cheryl Davis, and Chatta Nix) were actually so pro-prosecution that *they were struck by the petitioner*. *Id.*, at 111. The fourth, Joan Weiner, had a son who had shoplifted at the age of 10. App. 511. That is hardly comparable to Fields's situation, and Weiner was a strong State's juror for

other reasons: She had relatives who worked in law enforcement, *id.*, at 510, and her support for the death penalty was clear and unequivocal, *id.*, at 506, 511.

For the above reasons, my conclusion that there is room for debate as to the merits of petitioner's *Batson* claim is far removed from a judgment that the State's explanations for its peremptory strikes were implausible.

* * *

With these observations, I join the Court's opinion.

JUSTICE THOMAS, dissenting.

Unpersuaded by petitioner's claims, the state trial court found that "there was no purposeful discrimination by the prosecut[ion] in the use of . . . peremptory strikes," App. 878. This finding established that petitioner had failed to carry his burden at step three of the inquiry set out in *Batson* v. *Kentucky*, 476 U. S. 79 (1986). Title 28 U. S. C. § 2254(e)(1) requires that a federal habeas court "presum[e]" the state court's findings of fact "to be correct" unless petitioner can rebut the presumption "by clear and convincing evidence." The majority decides, without explanation, to ignore § 2254(e)(1)'s explicit command. I cannot. Because petitioner has not shown, by clear and convincing evidence, that any peremptory strikes of black veniremen were exercised because of race, he does not merit a certificate of appealability (COA). I respectfully dissent.

I

A

The Court agrees, *ante*, at 342, that the state court's finding at step three of *Batson* is a finding of fact ordinarily subject to § 2254(e)(1)'s presumption of correctness:

> "In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual

> issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence."

However, the Court implicitly rejects the obvious conclusion that the COA determination under § 2253(c) is part of a "proceeding instituted by an application for a writ of habeas corpus." Instead of presuming the state court's factfindings to be correct, as § 2254(e)(1) requires, the Court holds that petitioner need only show that reasonable jurists could disagree as to whether he can provide clear and convincing evidence that the finding was erroneous. *Ante*, at 341.

The Court's main justification for this conclusion is supposed fidelity to *Slack* v. *McDaniel*, 529 U. S. 473 (2000). See *ante*, at 338 ("'The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong'" (quoting *Slack*, *supra*, at 484)). But neither *Slack* nor any other decision of this Court addressing the COA procedure has ever considered a "constitutional claim" that turns entirely on issues of fact. In these circumstances, it is the text of § 2254(e)(1) that governs.

Unlike the majority, I begin with the plain text of the statute that instructs federal courts how to treat state-court findings of fact. At issue is what constitutes a "proceeding" for purposes of § 2254(e)(1). The word, "proceeding," means "[t]he regular and orderly progression of a lawsuit, including *all acts and events between* the time of commencement and the entry of judgment." Black's Law Dictionary 1221 (7th ed. 1999) (emphasis added). The COA, "standing alone, . . . does not assert a grievance against anyone, does not seek remedy or redress for any legal injury, and does not even require a 'party' on the other side. It is nothing more than a request for permission to seek review." *Hohn* v. *United States*, 524 U. S. 236, 256 (1998) (SCALIA, J., dissenting).

I agree with the majority that the existence of a COA is a jurisdictional prerequisite to the merits appeal. *Ante*, at 336. However, the Court takes a wrong turn when it implies that the merits appeal is part of the habeas process (or "proceeding") but the COA determination somehow is not. Overwhelming authority (including the majority opinion) confirms that § 2254(e)(1) applies to the merits appeal. See *ante*, at 342; *Weaver* v. *Bowersox*, 241 F. 3d 1024, 1030 (CA8 2001); *Putman* v. *Head*, 268 F. 3d 1223, 1241 (CA11 2001); *Johnson* v. *Gibson*, 254 F. 3d 1155, 1160 (CA10 2001); *Francis S.* v. *Stone*, 221 F. 3d 100, 114–115 (CA2 2000); *Weeks* v. *Snyder*, 219 F. 3d 245, 258 (CA3 2000); *Mueller* v. *Angelone*, 181 F. 3d 557, 575 (CA4 1999); *Ashford* v. *Gilmore*, 167 F. 3d 1130, 1131 (CA7 1999); cf. *Sumner* v. *Mata*, 449 U. S. 539, 546–547 (1981) (pre-Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) factual deference provision with virtually identical language applies to merits appeal). The COA determination should be treated no differently, because § 2254(e)(1) draws no distinction between the merits appeal and the COA. The Court's silent conclusion to the contrary is simply illogical. The COA's status as the jurisdictional prerequisite for the merits appeal requires that *both* the COA determination *and* the merits appeal be considered a part of the same "proceeding."

The Court's rejection of this conclusion also conflicts with pre-AEDPA practice. Prior to AEDPA, access to a merits appeal in federal habeas corpus proceedings was governed by a mechanism similar to the COA, known as a certificate of probable cause, or CPC. See *Slack*, *supra*, at 480. There was also a standard of factual deference similar to, though weaker than, the standard in § 2254(e)(1). See 28 U. S. C. § 2254(d) (1994 ed.).[1] Under these provisions (indis-

[1] The pre-AEDPA standard of factual deference provided:

"In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual

tinguishable from AEDPA's for these purposes), courts concluded that § 2254(e)(1)'s predecessor applied directly to the CPC proceeding, without any filtering through the "debatability" standard the Court has used in both the CPC and COA contexts. See, *e. g.*, *Barnard* v. *Collins*, 13 F. 3d 871, 876–877 (CA5 1994); *Cordova* v. *Collins*, 953 F. 2d 167, 169 (CA5 1992). These cases support the straightforward notion that § 2254(e)(1), like its predecessor did with respect to CPC proceedings, applies directly to the COA proceeding.

The Court's decision in *Hohn*, *supra*, which holds that the COA determination constitutes a "case" in the court of appeals for purposes of this Court's jurisdiction under 28 U. S. C. § 1254, is not to the contrary. *Hohn* does not hold, nor does its logic require, that the COA determination be regarded as separate from the rest of the habeas proceeding. In fact, *Hohn* rejected the proposition that "a request to proceed before a court of appeals should be regarded as a threshold inquiry *separate from the merits* . . . ." 524 U. S., at 246 (emphasis added). Indeed, *Hohn* analogized the COA to the filing of a notice of appeal, *id.*, at 247, which in the civil context all would consider to be part of the same "proceeding" ("instituted by" a complaint) as the trial and merits appeal.

B

The Court also errs, albeit in dicta, when it implies that delayed state factfinding—here the two years between *voir dire* and the post-trial *Batson* hearing[2]—is an excuse for

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issue, made by a State court of competent jurisdiction . . . shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit [enumerated exceptions omitted]. . . . And in an evidentiary hearing . . . the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous."

[2] Not all the factfinding was so hindered. Prosecutors gave reasons for 2 of the 10 strikes of black veniremen at the post-trial *Batson* hearing. One of those, Joe Warren, is at issue here. App. 856–860.

weakened factual deference. *Ante*, at 342–343. Even putting aside the fact that an appellate court on direct review should (and would) still give heavy deference to 2-year-old credibility findings,[3] this reasoning is in tension with the plain text of § 2254(e)(1) and ignores changes wrought by AEDPA to the role of federal courts on collateral review.

Unlike an appellate court's review of district court findings of fact for clear error, § 2254(e)(1) establishes a presumption of correctness. It requires that the federal habeas court assume the state court that entered the findings was the best placed factfinder with the most complete record and *only then* ask whether the petitioner can refute that factual finding by clear and convincing evidence. Procedural imperfections ordinarily will not affect this presumption; thus, it does not matter whether the state judge made his decision two years late or with a less-than-perfect record. Admittedly these conditions might increase the *odds* that a habeas applicant could locate helpful evidence, but to "presume" facts "correct" means a court cannot allow a habeas applicant to evade § 2254(e)(1) by attacking the process employed by the state *factfinder* rather than the actual *factfindings*.

This reading is confirmed by the changes worked by AEDPA. Section 2254(e)(1) does not, as its predecessor did, create exceptions to factual deference for procedural infirmities. For example, prior to AEDPA, a federal habeas court

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[3] I am puzzled by the majority's willingness to hold against *respondent* the failure of prosecutors to testify at the post-trial *Batson* hearing. *Petitioner* could easily have requested that the reasons for the allegedly unconstitutional peremptory strikes be given again, and did not. The attorney representing the State at the post-trial *Batson* hearing made certain that both trial prosecutors were present to reiterate the reasons they gave in the record for striking the challenged black veniremen. App. 865. Petitioner's counsel explicitly refused the opportunity to do so when it was offered. *Ibid.* Furthermore, I fail to understand why a move that resulted in a more efficient hearing without redundant testimony should redound to the benefit of petitioner, who bears the burden of proof in this federal habeas corpus proceeding.

would not defer to state-court determinations of fact if "the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing," 28 U. S. C. § 2254(d)(2) (1994 ed.), "the material facts were not adequately developed at the State court hearing," § 2254(d)(3), or "the applicant did not receive a full, fair, and adequate hearing," § 2254(d)(6). The removal of these exceptions forecloses the use of marginal procedural complaints—such as a delay between *voir dire* and a *Batson* hearing—to determine whether or "how much" a federal habeas court will defer to state-court factfinding.

Section 2254(e)(1) simply cannot be read to contain an implied sliding scale of deference. I do not understand the Court to disagree with this view, however, as its dicta does not actually purport to interpret the text of § 2254(e)(1).[4]

II

Because § 2254(e)(1) supplies the governing legal standard, petitioner must provide "clear and convincing" evidence of purposeful discrimination in order to obtain a COA. Petitioner's constitutional claim under *Batson* turns on this fact and "reasonable jurists could debate," *ante*, at 336 (internal

[4] I do, however, agree with the majority that the Court's decisions in *Hernandez* v. *New York*, 500 U. S. 352 (1991), and *Purkett* v. *Elem*, 514 U. S. 765 (1995) *(per curiam)*, can be helpful in guiding a federal habeas court deciding a claim under *Batson* v. *Kentucky*, 476 U. S. 79 (1986). For instance, both cases confirm that *Batson* step three turns on an evaluation of the prosecutor's proffered race-neutral justifications for the peremptory challenges at issue. *Purkett*, *supra*, at 768–769; *Hernandez*, 500 U. S., at 364–365 (plurality opinion); *id.*, at 372 (O'CONNOR, J., concurring in judgment); see also *Batson*, *supra*, at 98, n. 21. Additionally, because *Hernandez*'s clear-error standard is less demanding of a criminal defendant than § 2254(e)(1) is of a habeas applicant, a federal habeas court can deny relief on § 2254(e)(1) grounds if it determines it would do so when reviewing the same facts for clear error. Cf. *Marshall* v. *Lonberger*, 459 U. S. 422, 434–435 (1983) ("We greatly doubt that Congress . . . intended to authorize broader federal review of state court credibility determinations than are authorized in appeals within the federal system itself").

quotation marks omitted), whether a *Batson* violation occurred only if petitioner first meets his burden under § 2254(e)(1). And the simple truth is that petitioner has not presented anything remotely resembling "clear and convincing" evidence of purposeful discrimination.

A

The evidence amassed by petitioner can be grouped into four categories: (1) evidence of historical discrimination by the Dallas District Attorney's office in the selection of juries; (2) the use of the "jury shuffle" tactic by the prosecution; (3) the alleged similarity between white veniremen who were not struck by the prosecution and six blacks who were: Edwin Rand, Wayman Kennedy, Roderick Bozeman, Billy Jean Fields, Joe Warren, and Carroll Boggess; and (4) evidence of so-called disparate questioning with respect to veniremen's views on the death penalty and their ability to impose the minimum punishment.

The "historical" evidence is entirely circumstantial, so much so that the majority can only bring itself to say it "casts doubt on the State's claim that [discriminatory] practices had been discontinued before petitioner's trial." *Ante*, at 335. And the evidence that the prosecution used jury shuffles no more proves intentional discrimination than it forces petitioner to admit that he sought to eliminate whites from the jury, given that he employed the tactic even more than the prosecution did.[5] Ultimately, these two categories of evidence do very little for petitioner, because they do not address the genuineness of prosecutors' proffered race-neutral reasons for making the peremptory strikes of these particular jurors.

In short, the reasons that JUSTICE SCALIA finds this to be a "close case," *ante*, at 348 (concurring opinion), are reasons that, under the correct reading of § 2254(e)(1), it is a *losing*

[5] Petitioner shuffled the jury five times; the prosecution did so only three times. Brief for Respondent 21.

case. I write further to explore two arguments advanced by petitioner that the Court deemed helpful in establishing petitioner's "debatable" entitlement to relief, apparently because the majority's "debatability" inquiry requires a less-thorough review of the record and a more permissive attitude toward a COA movant's representations.

B

As noted, petitioner argues the prosecution struck six blacks—Rand, Kennedy, Bozeman, Fields, Warren, and Boggess—who were similarly situated to unstruck whites. I see no need to repeat JUSTICE SCALIA's dissection of petitioner's tales of white veniremen as ambivalent about the death penalty as Kennedy, Bozeman, Warren, and Boggess. *Ante*, at 350–353 (concurring opinion). However, the majority's cursory remark that "three of the State's proffered race-neutral rationales for striking [black] jurors pertained *just as well to some white jurors who were not challenged and who did serve on the jury*," *ante*, at 343 (emphasis added), is flatly incorrect and deserves some discussion.

For the three challenged peremptory strikes used on Fields, Warren, and Boggess, petitioner has not even correctly alleged the existence of "similarly situated" white veniremen. The majority's discussion of this subject is misleading, stating that "prosecutors explained that their peremptory challenges against six [black] potential jurors were based on ambivalence about the death penalty; hesitancy to vote to execute defendants capable of being rehabilitated; and the [veniremens'] own family history of criminality." *Ibid.* The implication is that for each of the six challenged veniremen, the prosecution gave all three reasons as justifications for the use of a peremptory strike. To clarify: Rand, Kennedy, Bozeman, Warren, and Boggess were struck for ambivalence about the death penalty. Fields, Warren, and Boggess were struck for having family mem-

bers with criminal histories. Bozeman and Fields were struck for making prodefense remarks about rehabilitation.

Simple deduction, and an analysis of petitioner's contentions that includes the *names* of these allegedly similar white veniremen, cf. *ibid.*, reveals that petitioner has unearthed no white venireman who, like Warren and Boggess, was *both* ambivalent about the death penalty *and* related to individuals who had previous brushes with the law.[6] Petitioner also produces no white venireman who, like Fields, expressed prodefense views on rehabilitation *and* had a family member with a criminal history.[7] "Similarly situated"

[6] Petitioner directs the Court to white veniremen Noad Vickery, Cheryl Davis, Chatta Nix, and Joan Weiner as having family members with criminal histories, but points to white veniremen Sandra Hearn and Marie Mazza as equally ambivalent about the death penalty. Brief for Petitioner 22. Of course, as JUSTICE SCALIA demonstrates, Hearn and Mazza were *not* ambivalent about the death penalty. *Ante*, at 351–352 (concurring opinion).

[7] Again petitioner points to Vickery, Davis, Nix, and Weiner for similar family histories. JUSTICE SCALIA has shown that none of these four were in fact similarly situated to Fields with respect to this justification. *Ante*, at 353–354 (concurring opinion). Petitioner also alleges that Hearn made prodefense remarks about rehabilitation similar to those made by Fields. Again, no white venireman even allegedly fits *both* reasons given for striking Fields. Furthermore, even if Fields had only been struck for his views on rehabilitation, those views were in no way equivalent to those expressed by Hearn. Fields answered "yes" to the question whether he believed that "everyone can be rehabilitated." App. 118. Fields went on to say that "[i]t may be far-fetched, but I feel like, if a person has the opportunity to really be talked about God and he commits himself, whereas he has committed this offense, then if he turns his life around, that is rehabilitation." *Ibid.* In contrast, Hearn stated that she "believe[d] in the death penalty if a criminal cannot be rehabilitated." *Id.*, at 694.

Petitioner tries to muddy the waters by pointing out that Fields was, in other respects, a good State's juror because he supported the death penalty. Brief for Petitioner 24–25. However, that does not change the fact that Fields said that everyone could be rehabilitated (and thus might have been swayed by a penitent defendant's testimony) and Hearn insisted that

does not mean matching any one of several reasons the prosecution gave for striking a potential juror—it means matching *all* of them.

This leaves Rand, Kennedy, and Bozeman.[8] Petitioner alleges that white jurors Hearn and Mazza were as ambivalent about the death penalty as these three struck black veniremen. JUSTICE SCALIA has adequately demonstrated that this is absurd with respect to Kennedy and Bozeman, but I agree that petitioner makes a slightly better case with Rand. *Ante*, at 352–353 (concurring opinion). However, since the burden is on petitioner to show, by *clear and convincing evidence*, that Rand was struck *because of his race*, I find this sliver of evidence, even when combined with petitioner's circumstantial evidence, insufficient to rebut § 2254(e)(1)'s presumption.

C

Petitioner's accounts of "disparate questioning" also amount to little of substance. Petitioner argues that the prosecution posed different questions at *voir dire* depending on the race of the venireman on two subjects: the death penalty and the minimum punishment allowed under law. Neither accusation can withstand a careful examination of the full record or help petitioner assemble the requisite clear and convincing evidence.

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some people could not be rehabilitated. In analyzing *Batson* claims the focus should not be on the "*reasonableness* of the asserted nonracial motive . . . [but] rather [on] the *genuineness* of the motive." *Purkett*, 514 U. S., at 769 (emphasis in original).

[8] The prosecution's stated reasons for striking Bozeman were that he was ambivalent about the death penalty and that he made prodefense remarks about rehabilitation. This is one case where the prosecution gave multiple reasons for a strike and petitioner actually correctly *alleged* the existence of a similarly situated white venireman, Hearn. Petitioner believes, albeit erroneously, see *ante*, at 351–353 (SCALIA, J., concurring), that Hearn expressed similar ambivalence about the death penalty *and* made prodefense remarks about rehabilitation.

1

Respondent counters petitioner's complaints about the so-called "graphic formulation" or "script" by arguing that this depiction was used only with those potential jurors who "expressed reservations about the death penalty in their juror questionnaires." Brief for Respondent 17. The majority discounts this explanation, stating that "[t]his cannot be accepted without further inquiry." *Ante*, at 344. Under my view, however, petitioner bears the burden of showing purposeful discrimination by clear and convincing evidence.

The Court's treatment of this issue focuses on the apparent disparity in treatment of 10 black veniremen and 10 white veniremen who were supposedly similar in their opposition to the death penalty. The majority notes that only 2 out of these 10 whites got the graphic description while 7 out of 10 blacks did. *Ante*, at 344–345. But the Court neglects to mention that the eight white veniremen who petitioner thinks should have received the graphic formulation, Reply Brief for Petitioner 15, n. 19, were so emphatically opposed to the death penalty that such a description would have served no purpose in clarifying their position on the issue. No trial lawyer would willingly antagonize a potential juror ardently opposed to the death penalty with an extreme portrait of its implementation. The strategy pursued by the prosecution makes perfect sense: When it was necessary to draw out a venireman's feelings about the death penalty they would use the graphic script, but when it was overkill they would not.

The record demonstrates that six of these eight white veniremen were so opposed to the death penalty that they were stricken for cause without the need for the prosecution to spend a peremptory challenge. For example, John Nelson wrote on his questionnaire, "I believe that the State does not have the right to take anyone's life," Tr. of Voir Dire in No. F85–78668–NL (5th Crim. Dist. Ct., Dallas County, Tex.), p. 625 (hereinafter VDR) (internal quotation marks omitted), and testified flatly, "I would not be able to vote for the death

penalty."[9] *Id.*, at 614. Nelson was struck for cause. *Id.*, at 662–663. Linda Berk was "always" opposed to the death penalty, *id.*, at 1449, and felt so strongly on the subject that the prosecutor remarked upon her discomfort, after which she stated, "[y]ou're going to have to excuse me because I'm getting a little emotional, okay?" *Id.*, at 1445. Later, after she had begun crying, Berk was struck for cause. *Id.*, at 1478. Gene Hinson stated curtly, "I put on the form there that I didn't agree with it," *id.*, at 1648, and was struck for cause. Sheila White said, "I have always been against . . . the death penalty," *id.*, at 2056, and was struck for cause.

Even those two not struck for cause had firm views. Margaret Gibson said: "I don't believe in the death penalty. I don't know why it was started. I don't think it solves anything," *id.*, at 485, and was struck by the prosecution with a peremptory strike. And James Holtz thought the death penalty appropriate only if a policeman or fireman was murdered. *Id.*, at 1021. I can apprehend simply no reason to fault the prosecution for failing to give a more graphic description of lethal injection to prospective jurors with such firm views against capital punishment.

I recognize that these *voir dire* statements only indirectly support respondent's explanation because the graphic script was typically given at the outset of *voir dire*—before the above quoted veniremen had the chance to give their stark answers. Nevertheless, all available evidence supports respondent's view that those who were unclear in their views on the death penalty *in their juror questionnaires* received the graphic formulation—and that those who were adamantly for *or against* the death penalty in their questionnaires did not.

The jury forms at issue asked two questions directly relevant to the death penalty. Question 56 asked, "Do you believe in the death penalty?," offered potential jurors the

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[9] Nelson was also a doctor and presumably did not need to have the lethal injection process described to him.

chance to circle "yes" or "no," and then asked them to "[p]lease explain your answer." See, *e. g.*, Joint Lodging 44 (Boggess questionnaire). Question 58 allowed potential jurors to circle "yes" or "no" in answering the following question: "Do you have any moral, religious, or personal beliefs that would prevent you from returning a verdict which would ultimately result in the execution of another human being?" *Ibid.*

First, as already noted, the deeper and clearer opposition to the death penalty on the part of the eight whites who did not receive the graphic script (but petitioner thinks should have) indirectly supports respondent's contention that this opposition came out in their questionnaires (presumably by an answer of "no" to question 56 and an answer of "yes" to question 58). But this is not the only evidence supporting respondent's view. Hinson, a white venireman who did not receive the graphic formulation, stated during *voir dire* that he "put on the form there that [he] didn't agree with [the death penalty] for both moral and religious reasons." VDR 1648. Similarly, Nelson, a white venireman not receiving the graphic formulation, stated on his questionnaire, "I believe that the State does not have the right to take anyone's life." *Id.*, at 625 (internal quotation marks omitted). Fernando Gutierrez, a juror who received the graphic formulation, answered "yes" to question 56, but also "yes" to question 58, indicating he had "moral, religious, or personal beliefs" that would obstruct his voting for the death penalty despite the fact that he believed in it. Joint Lodging 205.

The prosecution treated the black veniremen no differently. The blacks who did not receive the graphic formulation (whose questionnaires are contained in the record) *all* answered "yes" to question 56, stating they believed in the death penalty, and "no" to question 58, indicating that their beliefs wouldn't prevent them from imposing a death sentence. See *id.*, at 12 (Bozeman), 20 (Fields), 28 (Warren), 36

(Rand). The black veniremen who *were* given the graphic formulation, by contrast, gave ambiguous answers on their juror questionnaires expressing hesitation, rather than philosophical opposition, to the death penalty. Boggess answered "yes" to question 56 but also "yes" to question 58. *Id.*, at 44. Kennedy answered "yes" to question 56 but indicated that he believed in the death penalty "[o]nly in extreme cases, such as multiple murders." *Id.*, at 51. Troy Woods answered "no" to question 56, but also "no" to question 58, indicating he *did not* believe in the death penalty but would have no personal objection to imposing it. *Id.*, at 180. He wrote "that *[sic]* not punishment," in the space provided for question 56. *Ibid.* It happened that, while not completely clear about it in the questionnaire (and hence receiving the graphic formulation), Woods was an enthusiastic supporter of the death penalty, and he was, in fact, seated on petitioner's jury. Further confirming respondent's explanation, black veniremen Linda Baker, Janice Mackey, Paul Bailey, and Anna Keaton all gave unclear responses to questions 56 and 58 and all received the graphic formulation. See Tr. of Pretrial Hearings in No. F85–78660–NL (5th Crim. Dist. Ct., Dallas County, Tex.) (Def. Exh. 7).[10]

[10] Questions 56 and 58, and the responses thereto, are found on page 6 of each questionnaire. Baker did not circle "yes" or "no" in answering question 56, but wrote "[m]y strongest feeling is against the death penalty; *however, being aware of the overcrowding in jails and the number of murders[,] I would have to know the facts to make a decision . . . .*" (Emphasis added.) Baker also did not answer question 58, writing "undecided" instead. Mackey answered question 56 "no," indicating she did not believe in the death penalty, and wrote "Thou Shall Not Kill" in the explanation space. She then proceeded to answer question 58 "no" as well. Bailey circled "yes" in answering question 56, but wrote in "NO" with a circle around it, along with such explanations as "yes for a major crime" and "[n]o *one* have *[sic]* the right to take *anothe [sic]* ones *[sic]* life." (Emphases in original.) He then circled "no" in answering question 58. Keaton circled "no," indicating she did not believe in the death penalty, when she answered question 56, writing "It's not for me to pun-

To sum up, the correlation between questionnaire answers and the use of the graphic script is far stronger than any correlation with race. Sixteen veniremen clearly indicated on the questionnaires their feelings on the death penalty,[11] and 15 of them did not receive the graphic script.[12] Eight veniremen gave unclear answers and those eight veniremen got the graphic script.[13] In other words, for 23 out of 24, or 96%, of the veniremen for whom questionnaire information is available, the answers given accurately predict whether they got the graphic script.[14] Petitioner's theory that race determined whether a venireman got the graphic script produces a race-to-script correlation of only 74%—far worse.[15]

2

Petitioner fares no better with his allegation that the prosecution employed two different scripts on the basis of

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ished *[sic]* anyone." However she then circled "no" in answering question 58, indicating that she did not have any objection to imposing the death penalty.

[11] See VDR 1648 (Hinson), 625 (Nelson); Joint Lodging 12 (Bozeman), 20 (Fields), 28 (Warren), 36 (Rand), 125 (Mary Sumrow), 132 (Ronnie Long), 140 (Weiner), 148 (Mazza), 156 (Vivian Sztybel), 164 (Debra McDowell), 172 (Kevin Duke), 189 (Brenda Walsh), 197 (Filemon Zablan), 213 (Hearn).

[12] Sztybel received the graphic script. VDR 2828.

[13] Boggess, Kennedy, Baker, Mackey, Bailey, Keaton, Gutierrez, and Woods.

[14] This analysis considers Hinson and Nelson as being clearly opposed to the death penalty in their questionnaires (answering question 56 "no" and question 58 "yes") and Kennedy as being ambiguous (though in fact he answered question 56 "yes" and 58 "no"). Even without these assumptions, 13 out of 15 veniremen who answered "yes" to question 56 and "no" to question 58—indicating clear support for the death penalty—did not receive the graphic script. And seven out of seven of those answering "no" and "no" or "yes" and "yes"—indicating ambiguous or mixed feelings about the death penalty—or not answering clearly at all received the graphic script. This yields an accuracy rate of 20 out of 22, or 91%.

[15] For whites, 10 out of 12 did not get the graphic script. For blacks, 7 out of 11 did get the graphic script. This means race predicted use of the graphic script only 74% of the time.

race when asking questions about imposition of the minimum sentence. Indeed, this disparate questioning argument is as flawed as the last one. Respondent admits that the different questioning on minimum sentences was used as an effort to get veniremen the prosecution felt to be ambivalent about the death penalty dismissed for cause. In making the decision whether to employ the "manipulative" minimum punishment script, prosecutors could rely on both the questionnaires and substantial *voir dire* testimony, as the minimum punishment questioning occurred much later in *voir dire* than the graphic formulation.

Seven black veniremen were given the allegedly "manipulative" minimum punishment script, all of whom were opposed to the death penalty in varying degrees. Rand, Kennedy, Bozeman, Warren, and Boggess' views on the death penalty have all been exhaustively discussed. This leaves Baker and Fields. Baker's views on the death penalty were so clearly ambivalent that she is not even the subject of petitioner's *Batson* challenge. And Fields' family history of criminality and views on rehabilitation, as earlier discussed, *supra*, at 362, and n. 7, convinced the prosecution to use a peremptory strike.[16] Finally, petitioner's objection to the prosecution's decision not to use the "manipulative" punishment script on Woods, Reply Brief for Petitioner 17, n. 23, makes no sense. Woods gave answers indicating he would be an excellent State's juror—why would the prosecution have tried to eliminate him? Of course, if petitioner were correct that the prosecution sought to eliminate blacks then one might expect that all methods, including the use of the "manipulative" script, would have been deployed against Woods, who happened to also be black.

As with graphic questioning, respondent's explanation goes unrebutted by petitioner. Unless a venireman indicated he would be a poor State's juror (using the criteria that

[16] The prosecution in fact used peremptory strikes on all seven of these black veniremen.

respondent has identified here) *and would not otherwise be struck for cause or by agreement*, there was no reason to use the "manipulative" script. Thus, when petitioner points to the "State's failure to use its manipulative method with the vast majority of white veniremembers who expressed reservations about the death penalty," *ibid.*, he ignores the fact that of the 10 whites who expressed opposition to the death penalty, 8 were struck for cause or by agreement, *meaning no "manipulative" script was necessary to get them removed.* The other two whites were both given the "manipulative" script *and* peremptorily struck,[17] just like Rand, Kennedy, Bozeman, Fields, Warren, Boggess, and Baker.

* * *

Quite simply, petitioner's arguments rest on circumstantial evidence and speculation that does not hold up to a thorough review of the record. Far from rebutting § 2254(e)(1)'s presumption, petitioner has perhaps not even demonstrated that reasonable jurists could debate whether he has provided the requisite evidence of purposeful discrimination—but that is the majority's inquiry, not mine. Because petitioner has not demonstrated by clear and convincing evidence that even one of the peremptory strikes at issue was the result of racial discrimination, I would affirm the denial of a COA.

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[17] See Joint Lodging 110; VDR 502–511 (Gibson), 1046–1050 (Holtz).

Syllabus

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES ET AL. *v.* GUARDIANSHIP ESTATE OF KEFFELER ET AL.

CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 01–1420. Argued December 3, 2002—Decided February 25, 2003

Although Old-Age, Survivors, and Disability Insurance (OASDI) benefits under Title II of the Social Security Act, 42 U. S. C. § 401 *et seq.*, and Supplemental Security Income (SSI) benefits under Title XVI, § 1381 *et seq.*, are generally paid directly to the beneficiary, the Social Security Administration may distribute them to another individual or entity as the beneficiary's "'representative payee,'" §§ 405(j)(1)(A), 1383(a)(2)(A)(ii)(I). Regulations provide, *inter alia*, that social service agencies and custodial institutions may serve as representative payees, but follow a parent, legal guardian, or relative in the order of preference for appointment to that position. *E. g.*, 20 CFR §§ 404.2021(b)(7), 416.621(b)(7). Such a payee may expend funds "only for the use and benefit of the beneficiary," in a way the payee determines "to be in the [beneficiary's] best interests." §§ 404.2035(a), 416.635(a). Payments made for "current maintenance" are "for the use and benefit of the beneficiary," and "current maintenance" includes "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items," §§ 404.2040(a), 416.640(a). A representative payee "may not be required to use benefit payments to satisfy a [beneficiary's] debt" that arose before the period the benefit payments are certified to cover, but a payee may discharge such a debt if the beneficiary's "current and reasonably foreseeable needs" are met and it is in the beneficiary's interest to do so, §§ 404.2040(d), 416.640(d).

Washington State, through petitioner Department of Social and Health Services, provides foster care to certain children removed from their parents' custody, and it also receives and manages Social Security benefits as representative payee for many of those children. Pursuant to its regulation requiring that public benefits for a child, including SSI or OASDI benefits, be used on behalf of the child to help pay for the child's foster care costs, the department generally credits the Social Security benefits it receives to a special account for the beneficiary child, and debits the account to pay foster care providers. Respondents, who include such beneficiary children, filed this class action in state court, alleging, among other things, that the department's use of their OASDI or SSI benefits to reimburse itself for the foster care costs violated 42

U. S. C. §§ 407(a) and 1383(d)(1). Section 407(a), the Act's "antiattachment" provision, protects Title II benefits from "execution, levy, attachment, garnishment, or other legal process." Section 1383(d)(1) applies § 407(a) to Title XVI. In granting respondents summary judgment, the trial court enjoined the department from continuing to charge its foster care costs against Social Security benefits, ordered restitution of previous reimbursement transfers, and awarded attorney's fees. The State Court of Appeals certified the case to the Washington Supreme Court, which ultimately affirmed the trial court's holding that the department's practices violated the antiattachment provisions.

Held: The State's use of respondents' Social Security benefits to reimburse itself does not violate 42 U. S. C. § 407(a). Pp. 382–392.

(a) Neither the department's effort to become a representative payee, nor its use of respondents' Social Security benefits when it acts in that capacity, amounts to employing an "execution, levy, attachment, garnishment, or other legal process" under § 407(a). Because the department's activities do not involve any of the specified formal procedures, the case boils down to whether those activities are "other legal process." The statute uses that term restrictively, for under the established interpretative canons of *noscitur a sociis* and *ejusdem generis*, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words. *E. g.*, *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 114–115. Thus, "other legal process" should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability. This conclusion is confirmed by the definition of "legal process" in the Social Security Administration's Program Operations Manual System (POMS). On this restrictive understanding, it is apparent that the department's activities do not involve "legal process." Whereas the object of the specifically named processes is to discharge, or secure discharge of, some enforceable obligation, the State has no enforceable claim against its foster children. And while execution, levy, attachment, and garnishment typically involve the exercise of some sort of judicial or quasi-judicial authority to gain control over another's property, the department's reimbursement scheme operates on funds already in the department's possession and control, held on terms that allow the reimbursement. Additionally, although the State uses a reimbursement method of accounting, there is no question that the funds were spent for items of

"current maintenance" within the meaning of the regulations. That the State is dealing with the funds consistently with the regulations is confirmed by the POMS. The Government has gone even further to support this as a reasonable interpretation, text aside, owing to significant advantages of the reimbursement method in providing accurate documentation and allowing for easy monitoring of representative payees in administering Social Security. *Philpott* v. *Essex County Welfare Bd.*, 409 U. S. 413, and *Bennett* v. *Arkansas*, 485 U. S. 395 *(per curiam)*, distinguished. Pp. 382–389.

(b) The Court rejects the view that this construction of § 407(a), allowing a state agency to reimburse itself for foster care costs, is antithetical to the child's best interests. Respondents' premise that promoting those interests requires maximizing resources from left-over benefit income ignores the settled administrative law principle that an open-ended and potentially vague term is highly susceptible to administrative interpretation subject to judicial deference. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843. Under her statutory authority, the Commissioner has read the beneficiary's "interest" in light of the Act's basic objectives: to provide a minimum level of income to children who would not otherwise have sufficient resources, see, *e. g.*, *Sullivan* v. *Zebley*, 493 U. S. 521, 524, and to provide workers and their families the income required for ordinary and necessary living expenses, see, *e. g.*, *Califano* v. *Jobst*, 434 U. S. 47, 50. The Commissioner, that is, has decided that a representative payee serves the beneficiary's interest by seeing that basic needs are met, not by maximizing a trust fund attributable to fortuitously overlapping state and federal grants. This judgment not only is obviously within reasonable bounds, but is confirmed by the demonstrably antithetical character of respondents' position to the best interest of many foster care children. If respondents prevailed, many foster children would lose SSI benefits altogether, since eligibility for such benefits is lost if a child's resources creep above a certain minimal level, currently $2,000. *E. g.*, 20 CFR § 416.1205(c). In addition, respondents' argument forgets that public institutions like the department are last in line for appointment as representative payees. If respondents had their way, public offices might well not be there to serve as payees even as the last resort, because many States would be discouraged from accepting appointment as representative payees by the administrative costs of acting in that capacity. With a smaller total pool of money for their potential use, the chances of having funds for genuine needs beyond immediate support would obviously shrink, to the children's loss. Pp. 389–391.

145 Wash. 2d 1, 32 P. 3d 267, reversed and remanded.

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

Christine O. Gregoire, Attorney General of Washington, argued the cause for petitioners. With her on the briefs were *William Berggren Collins*, Senior Assistant Attorney General, *Walter Dellinger*, and *Pamela Harris*.

Patricia A. Millett argued the cause for the United States as *amicus curiae* urging reversal. With her on the briefs were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Kneedler*, *William Kanter*, and *Jonathan H. Levy*.

Teresa Wynn Roseborough argued the cause for respondents. With her on the brief were *Deborah M. Danzig*, *Richard B. Price*, and *Rodney M. Reinbold*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Florida et al. by *Robert A. Butterworth*, Attorney General of Florida, *Thomas E. Warner*, Solicitor General, and *Matthew J. Conigliaro*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *William H. Pryor, Jr.*, of Alabama, *Bruce M. Botelho* of Alaska, *Fiti A. Sunia* of American Samoa, *Janet Napolitano* of Arizona, *Bill Lockyer* of California, *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware, *Thurbert E. Baker* of Georgia, *Earl I. Anzai* of Hawaii, *James E. Ryan* of Illinois, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *G. Steven Rowe* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Jennifer M. Granholm* of Michigan, *Mike Moore* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Philip T. McLaughlin* of New Hampshire, *David Samson* of New Jersey, *Eliot Spitzer* of New York, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Anabelle Rodríguez* of Puerto Rico, *Sheldon Whitehouse* of Rhode Island, *Charles M. Condon* of South Carolina, *Mark Barnett* of South Dakota, *Paul G. Summers* of Tennessee, *John Cornyn* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Jerry W. Kilgore* of Virginia, *Iver A. Stridiron* of the Virgin Islands, *Darrell V. McGraw, Jr.*, of West Virginia, *James E. Doyle* of Wisconsin, and *Hoke MacMillan* of Wyoming; for the Counties of the State of California et al. by *Lloyd W. Pellman*, *Ada Gardiner*, *Catherine J. Pratt*, *Alan K. Marks*, and *Julie J. Surber;*

JUSTICE SOUTER delivered the opinion of the Court.

At its own expense, the State of Washington provides foster care to certain children removed from their parents' custody, and it also receives and manages Social Security benefits for many of the children involved, as permitted under the Social Security Act and regulations. The question here is whether the State's use of Social Security benefits to reimburse itself for some of its initial expenditures violates a provision of the Social Security Act protecting benefits from "execution, levy, attachment, garnishment, or other legal process." 42 U. S. C. § 407(a); see § 1383(d)(1). We hold that it does not.

I

A

The federal money in question comes under one or the other of two titles of the Social Security Act. Title II, 49 Stat. 622, as amended, 42 U. S. C. § 401 *et seq.*, is the Old-Age, Survivors, and Disability Insurance (OASDI) plan of benefits for elderly and disabled workers, and their survivors and dependents. A child may get OASDI payments if, say, the minor is unmarried and was dependent on a wage earner entitled to OASDI benefits. § 402(d). Title XVI of the Act, § 1381 *et seq.*, is the Supplemental Security Income (SSI) scheme of benefits for aged, blind, or disabled individuals, including children, whose income and assets fall below specified levels (the level for the latter currently being $2,000). §§ 1381–1382; 20 CFR § 416.1205(c) (2002).

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and for the Children's Defense Fund et al. by *Michael L. Martinez* and *David L. Haga.*

Briefs of *amici curiae* urging affirmance were filed for AARP by *Rochelle Bobroff* and *Michael Schuster;* and for Omar M. Azzam et al. by *Douglas W. Grinnell*, *Donnie R. Cox*, *Dennis B. Atchley*, and *Paul W. Leehey.*

Marsha L. Levick filed a brief for the Juvenile Law Center et al. as *amici curiae.*

Although the Social Security Administration generally pays OASDI and SSI benefits directly, it may distribute them "for [a beneficiary's] use and benefit" to another individual or entity as the beneficiary's " 'representative payee.' " 42 U. S. C. §§ 405(j)(1)(A), 1383(a)(2)(A)(ii)(I); see 20 CFR §§ 404.2001, 404.2010, 416.601, 416.610. In the exercise of its rulemaking authority, see 42 U. S. C. §§ 405(a), (j)(2)(A)(ii), the Administration has given priority to a child's parent, legal guardian, or relative when considering such an appointment. 20 CFR §§ 404.2021(b), 416.621(b). While the Act and regulations allow social service agencies and custodial institutions to serve in this capacity, such entities come last in order of preference. §§ 404.2021(b)(7), 416.621(b)(7); see also 42 U. S. C. §§ 405(j)(3)(F), 1383(a)(2)(D)(ii). Whoever the appointee may be, the Commissioner of Social Security must be satisfied that the particular appointment is "in the interest of" the beneficiary. §§ 405(j)(2)(A)(ii), 1383(a)(2)(B)(i)(II).[1]

Detailed regulations govern a representative payee's use of benefits. Generally, a payee must expend funds "only for the use and benefit of the beneficiary," in a way the payee determines "to be in the [beneficiary's] best interests." 20 CFR §§ 404.2035(a), 416.635(a). The regulations get more

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[1] Prior to making an appointment, the Commissioner must verify the potential representative payee's identity, connection to the beneficiary, and lack of relevant criminal record or prior misuse of Social Security funds. §§ 405(j)(2)(B), 1383(a)(2)(B)(ii); see 20 CFR §§ 404.2025, 416.625. The Commissioner must also attempt to identify any other potential representative payee whose appointment may be preferred. 42 U. S. C. §§ 405(j)(2)(A)(ii), 1383(a)(2)(B)(i)(II); see 20 CFR §§ 404.2020, 416.620.

In addition, the Commissioner is required to notify the beneficiary or the beneficiary's legal guardian of her intention to appoint a representative payee. 42 U. S. C. §§ 405(j)(2)(E)(ii), 1383(a)(2)(B)(xii); see 20 CFR §§ 404.2030, 416.630. "Any individual who is dissatisfied . . . with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner," with judicial review available thereafter. 42 U. S. C. §§ 405(j)(2)(E)(i), 1383(a)(2)(B)(xi).

specific in providing that payments made for "current maintenance" are deemed to be "for the use and benefit of the beneficiary," defining "current maintenance" to include "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." §§ 404.2040(a), 416.640(a). Although a representative payee "may not be required to use benefit payments to satisfy a debt of the beneficiary" that arose before the period the benefit payments are certified to cover, a payee may discharge such a debt "if the current and reasonably foreseeable needs of the beneficiary are met" and it is in the beneficiary's interest to do so. §§ 404.2040(d), 416.640(d). Finally, if there are any funds left over after a representative payee has used benefits for current maintenance and other authorized purposes, the payee is required to conserve or invest the funds and to hold them in trust for the beneficiary. §§ 404.2045, 416.645.

The Act requires a representative payee to provide the Commissioner with an accounting at least annually, 42 U. S. C. §§ 405(j)(3)(A), 1383(a)(2)(C)(i), and some institutional representative payees are liable to triennial onsite reviews by the Commissioner's staff, see Social Security Admin., Increased Monitoring of Fee-for-Service and Volume Representative Payees, Policy Instruction EM–00072 (June 1, 2000). In any case, the Commissioner may order a report any time she "has reason to believe" that a payee is misusing a beneficiary's funds, §§ 405(j)(3)(D), 1383(a)(2)(C)(iv), a criminal offense that calls for revocation of the payee's appointment, §§ 405(j)(1)(A), 408(a)(5), 1383(a)(2)(A)(iii), 1383a(a)(4); see 20 CFR §§ 404.2050, 416.650.

B

The State of Washington, through petitioner Department of Social and Health Services, makes foster care available to abandoned, abused, neglected, or orphaned children who have no guardians or other custodians able to care for them adequately. See Wash. Rev. Code §§ 13.34.030(5),

13.34.130(1)(b) (2002). Although the department provides foster care without strings attached to any child who needs it, the State's policy is "to attempt to recover the costs of foster care from the parents of [the] children," 145 Wash. 2d 1, 6, 32 P. 3d 267, 269 (2001) (citing Wash. Rev. Code § 74.20A.010 (2001)), and to use "moneys and other funds" of the foster child to offset "the amount of public assistance otherwise payable," § 74.13.060. The department accordingly adopted a regulation providing that public benefits for a child, including benefits under SSI or OASDI, "shall be used on behalf of the child to help pay for the cost of the foster care received." Wash. Admin. Code § 388–70–069(1) (2001), repealed by Wash. St. Reg. 01–08–047 (Mar. 30, 2001).[2]

When the department receives Social Security benefits as representative payee for children in its care, it generally credits them to a special Foster Care Trust Fund Account kept by the state treasurer, which includes subsidiary accounts for each child beneficiary. When these accounts are debited, it is only rarely for a direct purchase by the State of a foster child's food, clothing, and shelter. The usual purchaser is a foster care provider, who is then paid back by the department according to a fixed compensation schedule. Every month, the department compares its payments to the provider of a child's care with the child's subsidiary account balance, on which the department then draws to reimburse itself. Since the State's outlay customarily exceeds a child's monthly Social Security benefits, the reimbursement to the State usually leaves the account empty until the next federal benefit check arrives.

The department occasionally departs from this practice, in the exercise of its discretion, to use the Social Security funds

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[2] In April 2001, the department repealed § 388–70–069 and replaced it with a functionally similar provision. The new regulation provides that the department "must use income not exempted to cover the child's cost of care." Wash. Admin. Code § 388–25–0210.

"for extra items or special needs" ranging from orthodontics, educational expenses, and computers, through athletic equipment and holiday presents. 145 Wash. 2d, at 12, 32 P. 3d, at 272. And there have also been exceptional instances in which the department has forgone reimbursement for foster care to conserve a child's resources for expenses anticipated on impending emancipation. See App. to Pet. for Cert. A–57; App. 178.

C

As of September 1999, there were 10,578 foster children in the department's care, some 1,500 of them receiving OASDI or SSI benefits. The Commissioner had appointed the department to serve as representative payee for almost all of the latter children,[3] who are among respondents in this action brought on behalf of foster care children in the State of Washington who receive or have received OASDI or SSI benefits and for whom the department serves or has served as representative payee. In their 1995 class action filed in state court, they alleged, among other things, that the department's use of their Social Security benefits to reimburse itself for the costs of foster care violated 42 U. S. C. §§ 407(a) and 1383(d)(1). Section 407(a), commonly called the Act's "antiattachment" provision, provides that

> "[t]he right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

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[3] Of the 1,480 children in foster care as of September 1999 who were receiving Social Security benefits, 923 were receiving SSI benefits, 469 were receiving OASDI benefits, and 88 were receiving both, and the department acted as representative payee for 1,411.

Section 1383(d)(1) incorporates this provision by reference and applies it to Title XVI of the Act.

Ruling on cross-motions for summary judgment, the trial court agreed with respondents. It enjoined the department from continuing to charge its costs of foster care against Social Security benefits, ordered restitution of previous reimbursement transfers, and awarded attorney's fees to respondents. The department appealed to the State Court of Appeals, which certified the case to the Supreme Court of Washington.

After remanding for further factfinding, the State Supreme Court affirmed the trial court's holding that the department's practices violated the antiattachment provisions.[4] Relying in part on *Philpott* v. *Essex County Welfare Bd.*, 409 U. S. 413 (1973), and *Bennett* v. *Arkansas*, 485 U. S. 395 (1988) *(per curiam)*, the state court reasoned that § 407(a) was intended to protect Social Security benefits from the claims of creditors, and consequently framed "the crucial question" as "[w]hether [the department] acts as a *creditor* when it reimburses itself for foster care costs out of the foster children's [benefits]." 145 Wash. 2d, at 17, 32 P. 3d, at 275 (emphasis in original). Its answer was a slightly qualified yes, that the department's "reimbursement scheme . . . involve[s] creditor-type acts," performed by resort to the "'other legal process'" barred by § 407(a). *Id.*, at 18, 22, 25, 32 P. 3d, at 257, 277–278.

The state court's analysis not only gave no deference to the Commissioner's regulations, but omitted any mention of

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[4] In light of this holding, the State Supreme Court did not address respondents' other arguments, including the contention, accepted in the alternative by the trial court, that the department violated procedural due process by failing to provide notice of the "'intended result'" of its appointment as representative payee. 145 Wash. 2d 1, 15, 32 P. 3d 267, 274 (2001) (quoting Memorandum Opinion, No. 96–2–00157–2 (Wash. Super. Ct., Okanogan Cty., Sept. 29, 1998), p. 8, App. to Pet. for Cert. A–130).

the law governing rulemaking and interpretation by an administrative agency. Nor did the state court think it significant that it was the Commissioner of Social Security who had appointed the department to serve as representative payee for respondents' Social Security benefits. See *id.*, at 25, 32 P. 3d, at 278 (calling the department's representative payee status "at best immaterial to the analysis"). To the contrary, the court ultimately reasoned that the department's capacity as representative payee "further undercuts the legality of its reimbursement process" because a representative payee is charged with acting " 'in the best interests of the *beneficiary.*' " *Id.*, at 24, 32 P. 3d, at 278 (emphasis in original) (quoting 20 CFR § 404.2035(a)). "We seriously doubt using [Social Security] benefits to reimburse the state for its public assistance expenditure is in all cases, or even some, 'in the best interests of the beneficiary.' " 145 Wash. 2d, at 24, 32 P. 3d, at 278 (quoting § 404.2035(a)).[5]

Three justices concurred in part and dissented in part. They agreed with the majority that the department's use of Social Security benefits for "*past due* foster care payments" violated the antiattachment provisions of the Act. *Id.*, at 27, 32 P. 3d, at 279 (opinion of Bridge, J.) (emphasis in original). But they would have held that the department is entitled to use benefits to pay for "*current* maintenance costs, provided that any special needs of the children are satisfied first." *Ibid.* (emphasis in original).

After staying the State Supreme Court's mandate, 535 U. S. 923 (2002), we granted certiorari, 535 U. S. 1094 (2002), and now reverse.

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[5] The State Supreme Court ultimately remanded for further consideration of the scope and basis for awarding attorney's fees. Our jurisdiction, which is premised on a "[f]inal judgmen[t] or decre[e]" within the meaning of 28 U. S. C. § 1257(a), is unaffected by this disposition. See *Pierce County* v. *Guillen*, *ante*, at 142–143.

II

A

Section 407(a) protects SSI and OASDI benefits from "execution, levy, attachment, garnishment, or other legal process." The Supreme Court of Washington approached respondents' claim by generalizing from this text and concluding that § 407(a) prohibits "creditor-type acts," on which reading it held that the department's reimbursement scheme was prohibited. The analysis was flawed.

First, neither § 407(a) nor the Commissioner's regulations interpreting that provision say anything about "creditors." Cf. *Philpott*, *supra*, at 417 ("[Section] 407 does not refer to any 'claim of creditors'; it imposes a broad bar against the use of any legal process to reach all social security benefits"). In fact, the Act and regulations to which we owe deference, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984), not only permit certain creditors to serve as representative payees, 42 U. S. C. §§ 405(j)(2)(C)(iii), 1383(a)(2)(B)(v), but allow a representative payee to satisfy even old debts of a beneficiary so long as current and reasonably foreseeable needs will be met and reimbursement is in the beneficiary's interest, 20 CFR §§ 404.2040(d), 416.640(d). Finally, as the Supreme Court of Washington apparently recognized (in qualifying its characterization of "creditor relationship" by referring to the department's acts as merely "creditor-type"), the department is simply not a creditor of the foster care children for whom it serves as representative payee. No law provides that they are liable to repay the department for the costs of their care, and the State of Washington makes no such claim.

The questions to be answered in resolving this case, then, do not go to the State's character as a creditor. The questions, instead, are whether the department's effort to become a representative payee, or its use of respondents' Social Security benefits when it acts in that capacity, amounts to em-

ploying an "execution, levy, attachment, garnishment, or other legal process" within the meaning of § 407(a).[6] For obvious reasons, respondents do not contend that the department's activities involve any execution, levy, attachment, or garnishment. These legal terms of art refer to formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involve some form of judicial authorization. See, *e. g.*, Black's Law Dictionary 123 (7th ed. 1999) (defining "provisional attachment" as a "prejudgment attachment in which the debtor's property is seized so that if the creditor ultimately prevails, the creditor will be assured of recovering on the judgment . . . . Ordinarily, a hearing must be held before the attachment takes place"); *id.*, at 689 (defining "garnishment" as "[a] judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property"). The department's efforts to become a representative payee and to use respondents' benefits do not even arguably employ any of these traditional procedures.

Thus, the case boils down to whether the department's manner of gaining control of the federal funds involves "other legal process," as the statute uses that term. That restriction to the statutory usage of "other legal process" is

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[6] Respondents have apparently never argued that the reimbursement violates the § 407(a) bar to "transfe[r]" of benefits; nor would such a claim seem to hold any promise on the facts here. Respondents do, however, contend that the department's budgeting in anticipation of receiving Social Security benefits constitutes an "assign[ment]" prohibited by § 407(a). Congress could hardly have intended for this sort of budgeting, done by private and public representative payees alike, to run afoul of the antiattachment provisions of the Act, particularly since the Administration makes OASDI payments with a 1-month lag. See *infra*, at 387. To the extent that the text of § 407(a) is ambiguous on this score, the Commissioner's interpretation of the provision to permit such budgeting requires deference. See *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 139–140 (1944).

important here, for in the abstract the department does use legal process as the avenue to reimbursement: by a federal legal process the Commissioner appoints the department a representative payee,[7] and by a state legal process the department makes claims against the accounts kept by the state treasurer. The statute, however, uses the term "other legal process" far more restrictively, for under the established interpretative canons of *noscitur a sociis* and *ejusdem generis*, "'[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 114–115 (2001); see *Gutierrez* v. *Ada*, 528 U. S. 250, 255 (2000) ("[W]ords . . . are known by their companions"); *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961) ("The maxim *noscitur a sociis* . . . is often wisely applied where a word is capable of many

[7] Quite apart from any consequence of the interpretive canons discussed in the succeeding text, the mere fact of the department's appointment as representative payee could not reasonably be taken to contravene the antiattachment provision, contrary to respondents' suggestion. As already noted, the department's appointment is consistent with the sections of the Act governing appointment of representative payees, see 42 U. S. C. §§ 405(j)(2)(C), (3)(B) and (F), (4)(B), 1383(a)(2)(B)(v), (vii)(II), (C)(ii), (D)(ii), and with the Commissioner's regulations interpreting that section to authorize appointment of custodial institutions as a last resort, see 20 CFR §§ 404.2021(b)(7), 416.621(b)(7). To suggest that the department's appointment as representative payee, under the same statutory scheme that forbids the use of "other legal process," is itself forbidden legal process disregards the "cardinal rule that a statute is to be read as a whole," *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991), and ignores the Commissioner's reasonable regulations implementing the Act. See *King* v. *Schafer*, 940 F. 2d 1182, 1185 (CA8 1991) ("We cannot believe Congress contemplated this result in enacting § 407(a), particularly when this result would be contrary to another provision of the Social Security Act: § 405(j), providing for the appointment of representative payees"), cert. denied *sub nom. Crytes* v. *Schafer*, 502 U. S. 1095 (1992); 940 F. 2d, at 1185 ("Section 407(a) was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations").

meanings in order to avoid the giving of unintended breadth to the Acts of Congress"). Thus, "other legal process" should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.

In this case, the product of these canons of construction is confirmed by legal guidance in the Commissioner's own interpretation of "legal process." The Social Security Administration's Program Operations Manual System (POMS), the publicly available operating instructions for processing Social Security claims, defines "legal process" as used in § 407(a) as "the means by which a court (or agency or official authorized by law) compels compliance with its demand; generally, it is a court order." POMS GN 02410.001 (2002), available at http://policy.ssa.gov/poms.nsf/aboutpoms (as visited Jan. 23, 2003) (available in Clerk of Court's case file). Elsewhere in the POMS, the Commissioner defines "legal process" similarly as "any writ, order, summons or other similar process *in the nature of garnishment.* It may include, but is not limited to, an attachment, writ of execution, income execution order or wage assignment that is issued by . . . [a] court of competent jurisdiction . . . [or a]n authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law . . . [a]nd is directed to a governmental entity." POMS GN 02410.200 (emphasis added). While these administrative interpretations are not products of formal rulemaking, they nevertheless warrant respect in closing the door on any suggestion that the usual rules of statutory construction should get short shrift for the sake of reading "other legal process" in abstract breadth. See *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 139–140 (1944);

see also *United States* v. *Mead Corp.*, 533 U. S. 218, 228, 234–235 (2001).

On this restrictive understanding of "other legal process," it is apparent that the department's efforts to become respondents' representative payee and its use of respondents' benefits in that capacity involve nothing of the sort.[8] Whereas the object of the processes specifically named is to discharge, or secure discharge of, some enforceable obligation, the State has no enforceable claim against its foster children. And although execution, levy, attachment, and garnishment typically involve the exercise of some sort of judicial or quasi-judicial authority to gain control over another's property, the department's reimbursement scheme operates on funds already in the department's possession and control, held on terms that allow the reimbursement.

The regulations previously quoted specify that payments made for a beneficiary's "current maintenance" are deemed to be "for the use and benefit of the beneficiary," and define "current maintenance" to include "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." 20 CFR §§ 404.2040(a), 416.640(a). There is no question that the state funds to be reimbursed were spent for items of "current maintenance," and although the State typically makes the accounting reimbursement two months after spending its own funds, this practice is consistent with the regulation's definition of "current maintenance" as "costs incurred" for food and the like. That the State is dealing with the funds consistently with Social Security regulations is confirmed by the Commissioner's own interpretation of

[8] In arguing that § 407(a) applies here, respondents rely in part on § 407(b), which provides that "[n]o other provision of law . . . may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." Given our conclusion that § 407(a), by its terms, does not apply, however, respondents' reliance is misplaced.

those regulations as allowing reimbursement by a representative payee for maintenance costs, at least for costs incurred after the first benefit payment is made to the payee. Cf. POMS GN 00602.030 (defining a "past debt," which may be satisfied only if a beneficiary's current and reasonably foreseeable needs are met, as "a debt the beneficiary incurred before the date of the first benefit payment is made to the current payee").[9]

The Government has gone even further to support this as a reasonable interpretation, text aside, owing to significant advantages of the reimbursement method in providing accurate documentation and allowing for easy monitoring of representative payees in administering Social Security. See Brief for United States as *Amicus Curiae* 28–29.[10] In fact, it would be hard not to see this type of slightly delayed reimbursement as the only way OASDI funds could be spent on a foster child's current maintenance, since the Administration disburses those Social Security benefits with a time lag. See POMS GN 02401.001 (noting that OASDI benefits are dispensed within the month after they are due). In short, the Commissioner's interpretation of her own regulations is

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[9] There is one exception to this rule, although it is not relevant for our present purposes. In October 1996, Congress amended 42 U. S. C. § 1383 to specify that when the Administration issues a retroactive lump sum payment of SSI benefits that exceeds six times the monthly benefit amount, that amount is to be deposited directly into a dedicated interest-bearing bank account to be used only for certain special needs. § 1383(a)(2)(F).

[10] Moreover, as the Government notes, the position of the Supreme Court of Washington and respondents is ultimately "one of empty formalism" because a State could, indisputably, use a foster child's Social Security benefits directly for the costs of care and then reduce the State's own funding by the same amount. Brief for United States as *Amicus Curiae* 28. The financial result would be the same as in the system currently used by the department, yet the practical advantages of the reimbursement method of accounting would be lost.

eminently sensible and should have been given deference under *Auer* v. *Robbins*, 519 U. S. 452, 461 (1997).[11]

The Supreme Court of Washington rested its contrary conclusion, in part, on our decisions in *Philpott* v. *Essex County Welfare Bd.*, 409 U. S. 413 (1973), and *Bennett* v. *Arkansas*, 485 U. S. 395 (1988) *(per curiam)*. But both *Philpott* and *Bennett* involved judicial actions in which a State sought to attach a beneficiary's Social Security benefits as reimbursement for the costs of the beneficiary's care and maintenance. See *Philpott*, *supra*, at 415 ("Respondent sued to reach the bank account"); *Bennett*, *supra*, at 396 ("The State filed separate actions in state court seeking to attach Social Security benefits"). In each case, we held that the plain language of § 407(a) barred the State's legal action, and refused to find an implied exception to the antiattachment provision for a State simply because it provides for the care and maintenance of a beneficiary. See *Philpott*, *supra*, at 416; *Bennett*, *supra*, at 397. Unlike the present case, then, both *Philpott* and *Bennett* involved forms of legal process expressly prohibited by § 407(a). In neither case was the State acting as a representative payee in seeking to use the funds as reim-

[11] It bears mentioning that nothing in the State Supreme Court's reasoning limits its holding to state agencies. The state court's logic would apply equally to parents serving as representative payees, since they, like the department, are under a legal obligation to support their children's basic needs irrespective of Social Security benefits. See, *e. g.*, Wash. Rev. Code § 74.20A.010 (2002). We find it hard to believe that Congress would have intended this result, which would likely impose onerous and absurd accounting requirements on parents. See, *e. g.*, *Mellies* v. *Mellies*, 249 Kan. 28, 33, 815 P. 2d 114, 117 (1991) (holding that a parent "had no obligation to exhaust his personal finances in providing for [his child's] support before spending any of [the child's] social security benefits on the child's maintenance"); *In re Guardianship of Nelson*, 547 N. W. 2d 105, 108, 109 (Minn. Ct. App. 1996) (stating that because Social Security benefits are "not a windfall" for the beneficiary, "a representative payee parent can use his or her child's social security survivor benefits for the child's current maintenance regardless of the parent's financial ability to meet those needs").

bursement for the costs incurred in providing for the beneficiary's care and maintenance.

B

The poor fit between § 407(a) and respondents' argument points to the real basis of their objections to the reimbursement practice. At bottom, respondents' position and the State Supreme Court's holding reflect a view that allowing a state agency to reimburse itself for the costs of foster care is antithetical to the best interest of the beneficiary foster child. See 145 Wash. 2d, at 17, 32 P. 3d, at 275 (contending that a foster child "is better off with any payee other than the [department] because [the department] must provide foster care under state law *regardless* of whether it receives a reimbursement" (emphasis in original)); *id.*, at 24, 32 P. 3d, at 278 ("We seriously doubt using [Social Security] benefits to reimburse the state for its public assistance expenditure is in all cases, or even some, 'in the best interests of the beneficiary'" (quoting 20 CFR § 404.2035(a))).

Although it is true that the State could not directly compel the beneficiary or any other representative payee to pay Social Security benefits over to the State, that fact does not render the appointment of a self-reimbursing representative payee at odds with the Commissioner's mandate to find that a beneficiary's "interest . . . would be served" by the appointment. 42 U. S. C. §§ 405(j)(1)(A), 1383(a)(2)(A)(ii)(I).[12] Re-

[12] Respondents also go beyond the § 407(a) issue to argue that the department violates § 405(j) itself, by, for example, failing to exercise discretion in how it uses benefits, periodically "sweeping" beneficiaries' accounts to pay for past care, and "double dipping" by using benefits to reimburse the State for costs previously recouped from other sources. These allegations, and respondents' § 405(j) stand-alone arguments more generally, are far afield of the question on which we granted certiorari. Moreover, constitutional claims aside, respondents' complaint and the class-action certification related only to § 407(a). Accordingly, we decline to reach respondents' § 405(j) arguments here, except insofar as they relate to the proper interpretation of § 407(a). Respondents are free to press their stand-

spondents' premise that promoting the "best interests" of a beneficiary requires maximizing resources from left-over benefit income ignores the settled principle of administrative law that an open-ended and potentially vague term is highly susceptible to administrative interpretation subject to judicial deference. See *Chevron*, 467 U. S., at 842–843. Under her statutory authority, the Commissioner has read the "interest" of the beneficiary in light of the basic objectives of the Act: to provide a "minimum level of income" to children who would not "have sufficient income and resources to maintain a standard of living at the established Federal minimum income level," 20 CFR § 416.110 (SSI); see also *Sullivan* v. *Zebley*, 493 U. S. 521, 524 (1990), and to provide workers and their families the "income required for ordinary and necessary living expenses," § 404.508(a) (OASDI); see also *Califano* v. *Jobst*, 434 U. S. 47, 50 (1977). The Commissioner, that is, has decided that a representative payee serves the beneficiary's interest by seeing that basic needs are met, not by maximizing a trust fund attributable to fortuitously overlapping state and federal grants.

This judgment is not only obviously within the bounds of the reasonable, but one confirmed by the demonstrably antithetical character of respondents' position to the best interest of many foster care children. SSI beneficiaries would be most obviously subject to threat, since eligibility for benefits of these child recipients is lost if their assets creep above a certain minimal level, currently $2,000. See 42 U. S. C. §§ 1382(a)(1)(B), (3)(B); 20 CFR § 416.1205(c). Many foster children would lose SSI benefits altogether if respondents prevailed. See Brief for Children's Defense Fund et al. as *Amici Curiae* 20; Brief for Counties of the State of California et al. as *Amici Curiae* 16–18. But foster children beneficiaries under both SSI and OASDI would suffer from a broader disadvantage. Respondents' argument forgets the

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alone § 405(j) arguments before the Commissioner, who bears responsibility for overseeing representative payees, or elsewhere as appropriate.

fact that public institutions like the department are last in the line of eligibility for appointment as representative payees; the Commissioner appoints them only when no one else will do. See 20 CFR §§ 404.2021(b), 416.621(b). If respondents had their way, however, public offices like the department might well not be there to serve as payees even as the last resort, for there is reason to believe that if state agencies could not use Social Security benefits to reimburse the State in funding current costs of foster care, many States would be discouraged from accepting appointment as representative payees by the administrative costs of acting in that capacity. See Brief for Children's Defense Fund, *supra*, at 21; Brief for State of Florida et al. as *Amici Curiae* 7.[13] And without such agencies to identify children eligible for federal benefits and to help them qualify, see Brief for Children's Defense Fund, *supra*, at 20–24; Brief for State of Florida, *supra*, at 3–5; Brief for United States as *Amicus Curiae* 17, many eligible children would either obtain no Social Security benefits or need some very good luck to get them. With a smaller total pool of money for their potential use, the chances of having funds for genuine needs beyond immediate support would obviously shrink, to the children's loss. Respondents' position, in sum, would tend to produce worse representative payees in these cases, with less money to spend.

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[13] The Act does allow a state representative payee to use the lesser of 10 percent of monthly benefits or $25 per month to offset administrative expenses. See 42 U. S. C. §§ 405(j)(4)(A)(i), 1383(a)(2)(D)(i). Nevertheless, at least with respect to SSI, many States spend considerably more to identify eligible foster children and assist them in obtaining benefits. According to the department, for example, the process of screening potential SSI applicants among foster children and applying for benefits on their behalf involves 27 staff members and costs $1.9 million annually. See Application to Recall and Stay the Mandate of the Supreme Court of Washington Pending Certiorari, No. 01A557, pp. 18–19. For this reason, the department has said that it would not seek to become the representative payee for SSI beneficiaries absent an ability to use benefits to recoup some costs. See *ibid.*

III

The department's reimbursement from respondents' Social Security benefits does not violate § 407(a). The judgment of the Supreme Court of Washington is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

SCHEIDLER ET AL. *v.* NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

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

No. 01–1118. Argued December 4, 2002—Decided February 26, 2003*

Respondents, an organization that supports the legal availability of abortion and two facilities that perform abortions, filed a class action alleging that petitioners, individuals and organizations that oppose legal abortion, violated the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. §§ 1962(a), (c), and (d), by engaging in a nationwide conspiracy to shut down abortion clinics through "a pattern of racketeering activity" that included acts of extortion in violation of the Hobbs Act, § 1951. In concluding that petitioners violated RICO's civil provisions, the jury found, among other things, that petitioners' alleged pattern of racketeering activity included violations of, or attempts or conspiracy to violate, the Hobbs Act, state extortion law, and the Travel Act, § 1952. The jury awarded damages, and the District Court entered a permanent nationwide injunction against petitioners. Affirming in relevant part, the Seventh Circuit held, *inter alia*, that the things respondents claimed were extorted from them—the class women's right to seek medical services from the clinics, the clinic doctors' rights to perform their jobs, and the clinics' rights to conduct their business—constituted "property" for purposes of the Hobbs Act. The Court of Appeals further held that petitioners "obtained" that property, as § 1951(b)(2) requires. The court also upheld the issuance of the nationwide injunction, finding that private plaintiffs are entitled to obtain injunctive relief under § 1964(c).

Held:

1. Because all of the predicate acts supporting the jury's finding of a RICO violation must be reversed, the judgment that petitioners violated RICO must also be reversed. Pp. 400–410.

(a) Petitioners did not commit extortion within the Hobbs Act's meaning because they did not "obtain" property from respondents. Both of the sources Congress used as models in formulating the Hobbs Act—the New York Penal Code and the Field Code, a 19th-century model penal code—defined extortion as, *inter alia*, the "obtaining" of

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*Together with No. 01–1119, *Operation Rescue* v. *National Organization for Women, Inc., et al.*, also on certiorari to the same court.

property from another. This Court has recognized that New York's "obtaining" requirement entailed both a deprivation and acquisition of property, see *United States* v. *Enmons*, 410 U. S. 396, 406, n. 16, and has construed the Hobbs Act provision at issue to require both features, see, *e. g.*, *id.*, at 400. It is undisputed that petitioners interfered with, disrupted, and in some instances completely deprived respondents of their ability to exercise their property rights. Likewise, petitioners' counsel has acknowledged that aspects of his clients' conduct were criminal. But even when their acts of interference and disruption achieved their ultimate goal of shutting down an abortion clinic, such acts did not constitute extortion because petitioners did not "obtain" respondents' property. Petitioners may have deprived or sought to deprive respondents of their alleged property right of exclusive control of their business assets, but they did not acquire any such property. They neither pursued nor received "something of value from" respondents that they could exercise, transfer, or sell. *United States* v. *Nardello*, 393 U. S. 286, 290. To conclude that their actions constituted extortion would effectively discard the statutory "obtaining" requirement and eliminate the recognized distinction between extortion and the separate crime of coercion. The latter crime, which more accurately describes the nature of petitioners' actions, involves the use of force or threat of force to restrict another's freedom of action. It was clearly defined in the New York Penal Code as a separate, and lesser, offense than extortion when Congress turned to New York law in drafting the Hobbs Act. Congress' decision to include extortion as a violation of the Hobbs Act and omit coercion is significant here, as is the fact that the Anti-Racketeering Act, the predecessor to the Hobbs Act, contained sections explicitly prohibiting both. The Hobbs Act omission is particularly significant because a paramount congressional concern in drafting that Act was to be clear about what conduct was prohibited, *United States* v. *Culbert*, 435 U. S. 371, 378, and to carefully define the Act's key terms, including "extortion," *id.*, at 373. Thus, while coercion and extortion overlap to the extent that extortion necessarily involves the use of coercive conduct to obtain property, there has been and continues to be a recognized difference between these two crimes. Because the Hobbs Act is a criminal statute, it must be strictly construed, and any ambiguity must be resolved in favor of lenity. *Enmons*, *supra*, at 411. *Culbert*, *supra*, at 373, distinguished. If the distinction between extortion and coercion, which controls these cases, is to be abandoned, such a significant expansion of the law's coverage must come from Congress, not from the courts. Pp. 400–409.

(b) This Court's determination as to Hobbs Act extortion renders insufficient the other bases or predicate acts of racketeering supporting

Syllabus

the jury's conclusion that petitioners violated RICO. In accordance with this Court's decisions in *Nardello* and *Taylor* v. *United States*, 495 U. S. 575, where as here the Model Penal Code and a majority of States recognize the crime of extortion as requiring a party to obtain or to seek to obtain property, as the Hobbs Act requires, a state extortion offense for RICO purposes must have a similar requirement. Thus, because petitioners did not obtain or attempt to obtain respondents' property, both the state extortion claims and the claim of attempting or conspiring to commit state extortion were fatally flawed. The violations of the Travel Act and attempts to violate that Act also fail. These acts were committed in furtherance of allegedly extortionate conduct, but petitioners did not commit or attempt to commit extortion. Pp. 409–410.

2. Without an underlying RICO violation, the District Court's injunction must necessarily be vacated. The Court therefore need not address the second question presented—whether a private plaintiff in a civil RICO action is entitled to injunctive relief under § 1964(c). P. 411.

267 F. 3d 687, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. GINSBURG, J., filed a concurring opinion, in which BREYER, J., joined, *post*, p. 411. STEVENS, J., filed a dissenting opinion, *post*, p. 412.

Roy T. Englert, Jr., argued the cause for petitioners in both cases. On the briefs in No. 01–1118 were *Alan Untereiner*, *Arnon D. Siegel*, *Kathryn S. Zecca*, *Sherri Lynn Wolson*, *Thomas Brejcha*, *Deborah Fischer*, and *D. Colette Wilson*. On the brief in No. 01–1119 were *Jay Alan Sekulow*, *Colby M. May*, *Stuart J. Roth*, *James M. Henderson, Sr.*, *Vincent P. McCarthy*, *Walter M. Weber*, *Larry L. Crain*, *David A. Cortman*, *Robert W. Ash*, *Thomas P. Monaghan*, and *Charles E. Rice*.

Solicitor General Olson argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Assistant Attorney General Chertoff*, *Deputy Solicitor General Dreeben*, *Lisa Schiavo Blatt*, and *Frank J. Marine*.

Fay Clayton argued the cause for respondents. With her on the brief were *Susan Valentine*, *Joyce A. Pollack*, *Lowell E. Sachnoff*, *A. Stephen Hut, Jr.*, *David W. Ogden*, *Terry A. Maroney*, and *Kimberly A. Parker.*†

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†Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *William H. Pryor, Jr.*, Attorney General of Alabama, and *Charles B. Campbell*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *Don Stenberg* of Nebraska, *Wayne Stenehjem* of North Dakota, *Mark Barnett* of South Dakota, and *Robert Torres* of the Northern Mariana Islands; for Americans United for Life by *Nikolas T. Nikas*, *Denise M. Burke*, *Dorinda C. Bordlee*, and *G. Robert Blakey;* for Catholics for Life, Sacramento, by *James Joseph Lynch, Jr.;* for the Center for Individual Rights by *Michael E. Rosman;* for Concerned Women for America by *Theresa Schrempp* and *Mark L. Lorbiecki;* for Liberty Counsel by *Mathew D. Staver;* for the Life Legal Defense Foundation by *Andrew W. Zepeda* and *Catherine W. Short;* for the National Association of Criminal Defense Lawyers by *William J. Mertens;* for the New York Council of Defense Lawyers by *Richard A. Greenberg*, *Karl E. Pflanz*, and *Victor J. Rocco;* for the Rutherford Institute by *Jamin B. Raskin*, *John W. Whitehead*, and *Steven H. Aden;* and for the Seamless Garment Network et al. by *Edward McGlynn Gaffney, Jr.*, *William W. Bassett*, *G. Robert Blakey*, *Angela C. Carmella*, *Robert A. Destro*, *Marie A. Failinger*, *Victor Gregory Rosenblum*, and *Gerald F. Uelmen.*

Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Bill Lockyer*, Attorney General of California, *Manuel M. Medeiros*, Solicitor General, *Richard M. Frank*, Chief Assistant Attorney General, *Mary E. Hackenbracht*, Senior Assistant Attorney General, *Helen G. Arens*, Deputy Attorney General, *Eliot Spitzer*, Attorney General of New York, *Caitlin J. Halligan*, Solicitor General, and *Daniel J. Chepaitis*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Richard Blumenthal* of Connecticut, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Mike McGrath* of Montana, *Frankie Sue Del Papa* of Nevada, *Christine O. Gregoire* of Washington, and *Darrell V. McGraw, Jr.*, of West Virginia; for the American Medical Association et al. by *William A. Norris*, *Michael C. Small*, and *Sandra M. Lee;* for the Feminist Majority Foundation et al. by *Steven G. Gey;* for Former Federal Prosecutors et al. by *Maria T. Vullo;* for the Lawyers' Committee for Civil Rights Under Law by *Joseph R. Bankoff*, *Thomas Henderson*, and *Nancy Anderson;* for Motorola

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in these cases to answer two questions. First, whether petitioners committed extortion within the meaning of the Hobbs Act, 18 U. S. C. § 1951. Second, whether respondents, as private litigants, may obtain injunctive relief in a civil action pursuant to 18 U. S. C. § 1964 of the Racketeer Influenced and Corrupt Organizations Act (RICO). We hold that petitioners did not commit extortion because they did not "obtain" property from respondents as required by the Hobbs Act. We further hold that our determination with respect to extortion under the Hobbs Act renders insufficient the other bases or predicate acts of racketeering supporting the jury's conclusion that petitioners violated RICO. Therefore, we reverse without reaching the question of the availability of private injunctive relief under § 1964(c) of RICO.

We once again address questions arising from litigation between petitioners, a coalition of antiabortion groups called the Pro-Life Action Network (PLAN), Joseph Scheidler, and other individuals and organizations that oppose legal abortion,[1] and respondents, the National Organization for Women, Inc. (NOW), a national nonprofit organization that supports the legal availability of abortion, and two health

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Credit Corp. by *Charles G. Cole*, *Howard H. Stahl*, and *Bruce C. Bishop;* for the NARAL Foundation/NARAL et al. by *Amy E. Weissman*, *Sara N. Love*, and *Lawrence S. Ottinger;* and for the Religious Coalition for Reproductive Choice et al. by *George R. Kucik* and *Bonnie J. Campbell.*

Briefs of *amici curiae* were filed for the National Right to Work Legal Defense Foundation, Inc., by *Raymond J. LaJeunesse, Jr.;* for People for the Ethical Treatment of Animals, Inc., by *Jeffrey S. Kerr* and *Craig M. Bradley;* for Texas Black Americans for Life et al. by *Lawrence J. Joyce;* and for Emily Lyons by *Pamela L. Sumners.*

[1] The other petitioners include Andrew Scholberg, Timothy Murphy, and Operation Rescue.

care centers that perform abortions.[2] Our earlier decision provides a substantial description of the factual and procedural history of this litigation, see *National Organization for Women, Inc.* v. *Scheidler*, 510 U. S. 249 (1994), and so we recount only those details necessary to address the questions here presented.

In 1986, respondents sued in the United States District Court for the Northern District of Illinois alleging, *inter alia*, that petitioners violated RICO's §§ 1962(a), (c), and (d). They claimed that petitioners, all of whom were associated with PLAN, the alleged racketeering enterprise, were members of a nationwide conspiracy to "shut down" abortion clinics through a pattern of racketeering activity that included acts of extortion in violation of the Hobbs Act.[3]

The District Court dismissed respondents' RICO claims for failure to allege that the predicate acts of racketeering or the racketeering enterprise were economically motivated. See *National Organization for Women, Inc.* v. *Scheidler*, 765 F. Supp. 937 (ND Ill. 1991). The Court of Appeals for the Seventh Circuit affirmed that dismissal. See *National Organization for Women, Inc.* v. *Scheidler*, 968 F. 2d 612 (1992). We granted certiorari and reversed, concluding that RICO does not require proof that either the racketeering enterprise or the predicate acts of racketeering were moti-

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[2] NOW represents a certified class of all NOW members and nonmembers who have used or would use the services of an abortion clinic in the United States. The two clinics, the National Women's Health Organization of Summit, Inc., and the National Women's Health Organization of Delaware, Inc., represent a class of all clinics in the United States at which abortions are provided.

[3] The Hobbs Act, 18 U. S. C. § 1951(a), provides that "[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both."

vated by an economic purpose. See *Scheidler*, 510 U. S., at 256–262. The case was remanded to the District Court for further proceedings.

After a 7-week trial, a six-member jury concluded that petitioners violated the civil provisions of RICO. By answering a series of special interrogatory questions, the jury found, *inter alia*, that petitioners' alleged "pattern of racketeering activity" included 21 violations of the Hobbs Act, 18 U. S. C. § 1951; 25 violations of state extortion law; 25 instances of attempting or conspiring to commit either federal or state extortion; 23 violations of the Travel Act, 18 U. S. C. § 1952; and 23 instances of attempting to violate the Travel Act. The jury awarded $31,455.64 to respondent, the National Women's Health Organization of Delaware, Inc., and $54,471.28 to the National Women's Health Organization of Summit, Inc. These damages were trebled pursuant to § 1964(c). Additionally, the District Court entered a permanent nationwide injunction prohibiting petitioners from obstructing access to the clinics, trespassing on clinic property, damaging clinic property, or using violence or threats of violence against the clinics, their employees, or their patients.

The Court of Appeals for the Seventh Circuit affirmed in relevant part. The Court of Appeals rejected petitioners' contention that the things respondents claimed were "obtained"—the class women's right to seek medical services from the clinics, the clinic doctors' rights to perform their jobs, and the clinics' rights to provide medical services and otherwise conduct their business—were not "property" for purposes of the Hobbs Act. The court explained that it had "repeatedly held that intangible property such as the right to conduct a business can be considered 'property' under the Hobbs Act." 267 F. 3d 687, 709 (2001). Likewise, the Court of Appeals dismissed petitioners' claim that even if "property" was involved, petitioners did not "obtain" that property; they merely forced respondents to part with it. Again relying on Circuit precedent, the court held that "'as a legal

matter, an extortionist can violate the Hobbs Act without either seeking or receiving money or anything else. A loss to, or interference with the rights of, the victim is all that is required.'" *Ibid.* (quoting *United States* v. *Stillo*, 57 F. 3d 553, 559 (CA7 1995)). Finally, the Court of Appeals upheld the issuance of the nationwide injunction, finding that private plaintiffs are entitled to obtain injunctive relief under § 1964(c) of RICO. We granted certiorari, 535 U. S. 1016 (2002), and now reverse.

We first address the question whether petitioners' actions constituted extortion in violation of the Hobbs Act. That Act defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U. S. C. § 1951(b)(2). Petitioners allege that the jury's verdict and the Court of Appeals' decision upholding the verdict represent a vast and unwarranted expansion of extortion under the Hobbs Act. They say that the decisions below "rea[d] the requirement of 'obtaining' completely out of the statute" and conflict with the proper understanding of property for purposes of the Hobbs Act. Brief for Petitioners Joseph Scheidler et al. in No. 01–1118, pp. 11–13.

Respondents, throughout the course of this litigation, have asserted, as the jury instructions at the trial reflected,[4] that petitioners committed extortion under the Hobbs Act by using or threatening to use force, violence, or fear to cause respondents "to give up" property rights, namely, "a woman's right to seek medical services from a clinic, the right of

[4] The instruction given to the jury regarding extortion under the Hobbs Act provided that "[p]laintiffs have alleged that the defendant and others associated with PLAN committed acts that violate federal law prohibiting extortion. In order to show that extortion has been committed in violation of federal law, the plaintiffs must show that the defendant or someone else associated with PLAN knowingly, willfully, and wrongfully used actual or threatened force, violence or fear to cause women, clinic doctors, nurses or other staff, or the clinics themselves to give up a 'property right.'" Jury Instruction No. 24, App. 136.

the doctors, nurses or other clinic staff to perform their jobs, and the right of the clinics to provide medical services free from wrongful threats, violence, coercion and fear." Jury Instruction No. 24, App. 136. Perhaps recognizing the apparent difficulty in reconciling either its position (that "giv-[ing] up" these alleged property rights is sufficient) or the Court of Appeals' holding (that "interfer[ing] with such rights" is sufficient) with the requirement that petitioners "obtain[ed] . . . property from" them, respondents have shifted the thrust of their theory. 267 F. 3d, at 709. Respondents now assert that petitioners violated the Hobbs Act by "seeking to get control of the use and disposition of respondents' property." Brief for Respondents 24. They argue that because the right to control the use and disposition of an asset is property, petitioners, who interfered with, and in some instances completely disrupted, the ability of the clinics to function, obtained or attempted to obtain respondents' property.

The United States offers a view similar to that of respondents, asserting that "where the property at issue is a business's *intangible* right to exercise exclusive control over the use of its assets, [a] defendant obtains that property by obtaining control over the use of those assets." Brief for United States as *Amicus Curiae* 22. Although the Government acknowledges that the jury's finding of extortion may have been improperly based on the conclusion that petitioners deprived respondents of a liberty interest,[5] it maintains that under its theory of liability, petitioners committed extortion.

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[5] The Solicitor General agreed at oral argument that even if we accept the Government's view as to extortion under the Hobbs Act, the cases must be remanded because the generalized jury instruction regarding federal extortion included a woman's right to seek medical services as a property right petitioners could extort from respondents; a right he acknowledged is more accurately characterized as an individual liberty interest. See Tr. of Oral Arg. 30–31.

We need not now trace what are the outer boundaries of extortion liability under the Hobbs Act, so that liability might be based on obtaining something as intangible as another's right to exercise exclusive control over the use of a party's business assets.[6] Our decisions in *United States* v. *Green*, 350 U. S. 415, 420 (1956) (explaining that "extortion . . . in no way depends upon having a direct benefit conferred on the person who obtains the property"), and *Carpenter* v. *United States*, 484 U. S. 19, 27 (1987) (finding that confidential business information constitutes "property" for purposes of the federal mail fraud statute), do not require such a result. Whatever the outer boundaries may be, the effort to characterize petitioners' actions here as an "obtaining of property from" respondents is well beyond them. Such a result would be an unwarranted expansion of the meaning of that phrase.

Absent contrary direction from Congress, we begin our interpretation of statutory language with the general presumption that a statutory term has its common-law meaning. See *Taylor* v. *United States*, 495 U. S. 575, 592 (1990); *Morissette* v. *United States*, 342 U. S. 246, 263 (1952). At common law, extortion was a property offense committed by a public official who took "any money or thing of value" that was not due to him under the pretense that he was entitled to such property by virtue of his office. 4 W. Blackstone, Commentaries on the Laws of England 141 (1765); 3 R. Anderson, Wharton's Criminal Law and Procedure § 1393, pp. 790–791 (1957). In 1946, Congress enacted the Hobbs Act, which explicitly "expanded the common-law definition of extortion to include acts by private individuals." *Evans* v. *United States*, 504 U. S. 255, 261 (1992) (emphasis deleted). While

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[6] Accordingly, the dissent is mistaken to suggest that our decision reaches, much less rejects, lower court decisions such as *United States* v. *Tropiano*, 418 F. 2d 1069, 1076 (1969), in which the Second Circuit concluded that the intangible right to solicit refuse collection accounts "constituted property within the Hobbs Act definition."

the Hobbs Act expanded the scope of common-law extortion to include private individuals, the statutory language retained the requirement that property must be "obtained." See 18 U. S. C. § 1951(b)(2).

Congress used two sources of law as models in formulating the Hobbs Act: the Penal Code of New York and the Field Code, a 19th-century model penal code. See *Evans*, *supra*, at 261–262, n. 9.[7] Both the New York statute and the Field Code defined extortion as "the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right." 4 Commissioners of the Code, Proposed Penal Code of the State of New York § 613 (1865) (reprint 1998) (Field Code); N. Y. Penal Law § 850 (1909). The Field Code explained that extortion was one of four property crimes, along with robbery, larceny, and embezzlement, that included "the criminal acquisition of . . . property." § 584 note, p. 210. New York case law before the enactment of the Hobbs Act demonstrates that this "obtaining of property" requirement included both a deprivation and acquisition of property. See, *e. g.*, *People* v. *Ryan*, 232 N. Y. 234, 236, 133 N. E. 572, 573 (1921) (explaining that an intent "to extort" requires an accompanying intent to "gain money or property"); *People* v. *Weinseimer*, 117 App. Div. 603, 616, 102 N. Y. S. 579, 588 (1907) (noting that in an extortion prosecution, the issue that must be decided is whether the accused "receive[d] [money] from the complainant").[8]

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[7] Representative Hobbs explicitly stated that the term extortion was "based on the New York law." 89 Cong. Rec. 3227 (1943).

[8] The dissent endorses the opinion of the Court of Appeals in *United States* v. *Arena*, 180 F. 3d 380 (CA2 1999), to reach a more expansive definition of "obtain" than is found in the cases just cited. The Court of Appeals quoted part of a dictionary definition of the word "obtain" in Webster's Third New International Dictionary, 180 F. 3d, at 394. The full text of the definition reads "to gain or attain possession or disposal of." That court then resorted to the dictionary definition of "disposal," which includes "the regulation of the fate . . . of something." Surely if the rule of lenity, which we have held applicable to the Hobbs Act, see *infra*, at 408,

We too have recognized that the "obtaining" requirement of extortion under New York law entailed both a deprivation and acquisition of property. See *United States* v. *Enmons*, 410 U. S. 396, 406, n. 16 (1973) (noting that "[j]udicial construction of the New York statute" demonstrated that "extortion requires an intent 'to obtain that which in justice and equity the party is not entitled to receive'" (quoting *People* v. *Cuddihy*, 151 Misc. 318, 324, 271 N. Y. S. 450, 456 (1934))). Most importantly, we have construed the extortion provision of the Hobbs Act at issue in these cases to require not only the deprivation but also the acquisition of property. See, *e. g.*, *Enmons*, *supra*, at 400 (Extortion under the Hobbs Act requires a "'wrongful' *taking* of . . . property" (emphasis added)). With this understanding of the Hobbs Act's requirement that a person must "obtain" property from another party to commit extortion, we turn to the facts of these cases.

There is no dispute in these cases that petitioners interfered with, disrupted, and in some instances completely deprived respondents of their ability to exercise their property rights. Likewise, petitioners' counsel readily acknowledged at oral argument that aspects of his clients' conduct were criminal.[9] But even when their acts of interference and dis-

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means anything, it means that the familiar meaning of the word "obtain"—to gain possession of—should be preferred to the vague and obscure "to attain regulation of the fate of."

[9] "QUESTION: But are we talking about actions that constitute the commission of some kind of criminal offense in the process?

. . . . . .

"MR. ENGLERT: Oh, yes. Trespass.

"QUESTION: Yes, and other things, destruction of property and so forth, I suppose.

"MR. ENGLERT: Oh, yes. . . .

. . . . . .

"QUESTION: I mean, we're not talking about conduct that is lawful here.

"MR. ENGLERT: We are not talking about extortion, but we are talking about some things that could be punished much less severely. It has never been disputed in this case . . . that there were trespasses." Tr. of Oral Arg. 8–9.

ruption achieved their ultimate goal of "shutting down" a clinic that performed abortions, such acts did not constitute extortion because petitioners did not "obtain" respondents' property. Petitioners may have deprived or sought to deprive respondents of their alleged property right of exclusive control of their business assets, but they did not acquire any such property. Petitioners neither pursued nor received "something of value from" respondents that they could exercise, transfer, or sell. *United States* v. *Nardello,* 393 U. S. 286, 290 (1969). To conclude that such actions constituted extortion would effectively discard the statutory requirement that property must be obtained from another, replacing it instead with the notion that merely interfering with or depriving someone of property is sufficient to constitute extortion.

Eliminating the requirement that property must be obtained to constitute extortion would not only conflict with the express requirement of the Hobbs Act, it would also eliminate the recognized distinction between extortion and the separate crime of coercion—a distinction that is implicated in these cases. The crime of coercion, which more accurately describes the nature of petitioners' actions, involves the use of force or threat of force to restrict another's freedom of action. Coercion's origin is statutory, and it was clearly defined in the New York Penal Code as a separate, and lesser, offense than extortion when Congress turned to New York law in drafting the Hobbs Act.[10] New York case

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[10] New York Penal Law § 530 (1909), Coercing another person a misdemeanor, provided: "A person who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

"1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property or threatens such violence or injury; or,

"2. Deprives any such person of any tool, implement or clothing or hinders him in the use thereof; or,

"3. Uses or attempts the intimidation of such person by threats or force,

"Is guilty of a misdemeanor."

law applying the coercion statute before the passage of the Hobbs Act involved the prosecution of individuals who, like petitioners, employed threats and acts of force and violence to dictate and restrict the actions and decisions of businesses. See, *e. g.*, *People* v. *Ginsberg*, 262 N. Y. 556, 188 N. E. 62 (1933) (affirming convictions for coercion where defendant used threatened and actual property damage to compel the owner of a drug store to become a member of a local trade association and to remove price advertisements for specific merchandise from his store's windows); *People* v. *Scotti*, 266 N. Y. 480, 195 N. E. 162 (1934) (affirming conviction for coercion where defendants used threatened and actual force to compel a manufacturer to enter into an agreement with a labor union of which the defendants were members); *People* v. *Kaplan*, 240 App. Div. 72, 269 N. Y. S. 161 (1934) (affirming convictions for coercion where defendants, members of a labor union, used threatened and actual physical violence to compel other members of the union to drop lawsuits challenging the manner in which defendants were handling the union's finances).

With this distinction between extortion and coercion clearly drawn in New York law prior to 1946, Congress' decision to include extortion as a violation of the Hobbs Act and omit coercion is significant assistance to our interpretation of the breadth of the extortion provision. This assistance is amplified by other evidence of Congress' awareness of the difference between these two distinct crimes. In 1934, Congress formulated the Anti-Racketeering Act, ch. 569, 48 Stat. 979. This Act, which was the predecessor to the Hobbs Act, targeted, as its name suggests, racketeering activities that affected interstate commerce, including both extortion and coercion as defined under New York law.[11] Accordingly, the

[11] A subcommittee of the Commerce Committee, known as the Copeland Subcommittee, employed a working definition of "racketeering," which included organized conspiracies to "commit the crimes of extortion or coercion, or attempts to commit extortion or coercion, within the definition of

Act contained both a section explicitly prohibiting coercion and a section prohibiting the offense of extortion as defined by the Field Code and New York Penal Code. See ch. 569, §§ 2(a) and 2(b).

Several years after the enactment of the Anti-Racketeering Act, this Court decided *United States* v. *Teamsters*, 315 U. S. 521 (1942). In *Teamsters*, this Court construed an exception provided in the Anti-Racketeering Act for the payment of wages by a bona fide employer to a bona fide employee to find that the Act "did not cover the actions of union truckdrivers who exacted money by threats or violence from out-of-town drivers in return for undesired and often unutilized services." *United States* v. *Culbert*, 435 U. S. 371, 377 (1978) (citing *Teamsters*, *supra*). "Congressional disapproval of this decision was swift," and the Hobbs Act was subsequently enacted to supersede the Anti-Racketeering Act and reverse the result in *Teamsters*. *Enmons*, 410 U. S., at 402, and n. 8. The Act prohibited interference with commerce by "robbery or extortion" but, as explained above, did not mention coercion.

This omission of coercion is particularly significant in light of the fact that after *Teamsters*, a "paramount congressional concern" in drafting the Hobbs Act "was to be clear about what conduct was prohibited." *Culbert*, *supra*, at 378.[12] Accordingly, the Act "carefully defines its key terms, such as 'robbery,' 'extortion,' and 'commerce.'" 435 U. S., at 373. Thus, while coercion and extortion certainly overlap to the extent that extortion necessarily involves the use of coercive

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these crimes found in the penal law of the State of New York and other jurisdictions." S. Rep. No. 1189, 75th Cong., 1st Sess., 3 (1937); *United States* v. *Culbert*, 435 U. S. 371, 375–376 (1978).

[12] As we reported in *Culbert*, *supra*, at 378: "Indeed, many Congressmen praised the [Hobbs Act] because it set out with more precision the conduct that was being made criminal. As Representative Hobbs noted, the words robbery and extortion 'have been construed a thousand times by the courts. Everybody knows what they mean'" (quoting 91 Cong. Rec. 11912 (1945)).

conduct to obtain property, there has been and continues to be a recognized difference between these two crimes, see, *e. g.*, ALI, Model Penal Code and Commentaries §§ 212.5, 223.4 (1980) (hereinafter Model Penal Code),[13] and we find it evident that this distinction was not lost on Congress in formulating the Hobbs Act.

We have said that the words of the Hobbs Act "do not lend themselves to restrictive interpretation" because they "'manifes[t] . . . a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence.'" *Culbert*, *supra*, at 373 (quoting *Stirone* v. *United States*, 361 U. S. 212, 215 (1960)). We have also said, construing the Hobbs Act in *Enmons*, *supra*, at 411:

> "Even if the language and history of the Act were less clear than we have found them to be, the Act could not properly be expanded as the Government suggests—for two related reasons. First, this being a criminal statute, it must be strictly construed, and any ambiguity must be resolved in favor of lenity" (citations omitted).

We think that these two seemingly antithetical statements can be reconciled. *Culbert* refused to adopt the view that Congress had not exercised the full extent of its commerce power in prohibiting extortion which "affects commerce or the movement of any article or commodity in commerce." But there is no contention by petitioners here that their acts did not affect interstate commerce. Their argument is that

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[13] Under the Model Penal Code § 223.4, Comment 1, pp. 201–202, extortion requires that one "obtains [the] property of another" using threat as "the method employed to deprive the victim of his property." This "obtaining" is further explained as "'bring[ing] about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another.'" *Id.*, § 223.3, Comment 2, at 182. Coercion, on the other hand, is defined as making "specified categories of threats . . . with the purpose of unlawfully restricting another's freedom of action to his detriment." *Id.*, § 212.5, Comment 2, at 264.

their acts did not amount to the crime of extortion as set forth in the Act, so the rule of lenity referred to in *Enmons* may apply to their case quite consistently with the statement in *Culbert.* "[W]hen there are two rational readings of a criminal statute, one harsher than the other, we are to choose the harsher only when Congress has spoken in clear and definite language." *McNally* v. *United States,* 483 U. S. 350, 359–360 (1987). If the distinction between extortion and coercion, which we find controls these cases, is to be abandoned, such a significant expansion of the law's coverage must come from Congress, and not from the courts.

Because we find that petitioners did not obtain or attempt to obtain property from respondents, we conclude that there was no basis upon which to find that they committed extortion under the Hobbs Act.

The jury also found that petitioners had committed extortion under various state-law extortion statutes, a separate RICO predicate offense. Petitioners challenged the jury instructions as to these on appeal, but the Court of Appeals held that any error was harmless, because the Hobbs Act verdicts were sufficient to support the relief awarded. Respondents argue in this Court that state extortion offenses do not have to be identical to Hobbs Act extortion to be predicate offenses supporting a RICO violation. They concede, however, that for a state offense to be an "act or threat involving . . . extortion, . . . which is chargeable under State law," as RICO requires, see 18 U. S. C. § 1961(1), the conduct must be capable of being generically classified as extortionate. Brief for Respondents 33–34. They further agree that such "generic" extortion is defined as "'obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats.'" *Id.,* at 34 (quoting *Nardello,* 393 U. S., at 290).

This concession is in accord with our decisions in *Nardello* and *Taylor* v. *United States,* 495 U. S. 575 (1990). In *Nardello,* we held that the Travel Act's prohibition, 18 U. S. C.

§ 1952(b)(2), against "extortion . . . in violation of the laws of the State in which committed or of the United States" applies to extortionate conduct classified by a state penal code as blackmail rather than extortion. We determined that if an act prohibited under state law fell within a generic definition of extortion, for which we relied on the Model Penal Code's definition of "obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats," it would constitute a violation of the Travel Act's prohibition regardless of the State's label for that unlawful act. See *Nardello, supra,* at 296 (explaining that regardless of Pennsylvania's labeling defendants' acts as blackmail and not extortion, defendants violated the Travel Act because "the indictment encompasses a type of activity generally known as extortionate since money was to be obtained from the victim by virtue of fear and threats of exposure"). In *Taylor,* relying in part on *Nardello,* we concluded that in including "burglary" as a violent crime in 18 U. S. C. § 924(e)'s sentencing enhancement provision for felons' possessing firearms, Congress meant "burglary" in "the generic sense in which the term is now used in the criminal codes of most States." 495 U. S., at 598. Accordingly, where as here the Model Penal Code and a majority of States recognize the crime of extortion as requiring a party to obtain or to seek to obtain property, as the Hobbs Act requires, the state extortion offense for purposes of RICO must have a similar requirement.

Because petitioners did not obtain or attempt to obtain respondents' property, both the state extortion claims and the claim of attempting or conspiring to commit state extortion were fatally flawed. The 23 violations of the Travel Act and 23 acts of attempting to violate the Travel Act also fail. These acts were committed in furtherance of allegedly extortionate conduct. But we have already determined that petitioners did not commit or attempt to commit extortion.

Because all of the predicate acts supporting the jury's finding of a RICO violation must be reversed, the judgment that petitioners violated RICO must also be reversed. Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated. We therefore need not address the second question presented—whether a private plaintiff in a civil RICO action is entitled to injunctive relief under 18 U. S. C. § 1964.

The judgment of the Court of Appeals is accordingly

Reversed.

JUSTICE GINSBURG, with whom JUSTICE BREYER joins, concurring.

I join the Court's opinion, persuaded that the Seventh Circuit's decision accords undue breadth to the Racketeer Influenced and Corrupt Organizations Act (RICO or Act). As JUSTICE STEVENS recognizes, "Congress has enacted specific legislation responsive to the concerns that gave rise to these cases." *Post*, at 417 (dissenting opinion). In the Freedom of Access to Clinic Entrances Act of 1994, 18 U. S. C. § 248, Congress crafted a statutory response that homes in on the problem of criminal activity at health care facilities. See *ante*, at 404–405, and n. 9 (noting petitioners' acknowledgment that at least some of the protesters' conduct was criminal, and observing that "[t]he crime of coercion [a separate, and lesser, offense than extortion] more accurately describes the nature of petitioners' actions"). Thus, the principal effect of a decision against petitioners here would have been on other cases pursued under RICO.*

RICO, which empowers both prosecutors and private enforcers, imposes severe criminal penalties and hefty civil lia-

*At oral argument, the Government was asked: "[D]o you agree that your interpretation would have been applicable to the civil rights sit-ins?" Tr. of Oral Arg. 25. The Solicitor General responded: "Under some circumstances, it could have if illegal force or threats were used to prevent a business from operating." *Ibid.*

bility on those engaged in conduct within the Act's compass. See, *e. g.*, § 1963(a) (up to 20 years' imprisonment and wide-ranging forfeiture for a single criminal violation); § 1964(a) (broad civil injunctive relief); § 1964(c) (treble damages and attorneys' fees for private plaintiffs). It has already "evolv[ed] into something quite different from the original conception of its enactors," *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 500 (1985), warranting "concern[s] over the consequences of an unbridled reading of the statute," *id.*, at 481. The Court is rightly reluctant, as I see it, to extend RICO's domain further by endorsing the expansive definition of "extortion" adopted by the Seventh Circuit.

JUSTICE STEVENS, dissenting.

The term "extortion" as defined in the Hobbs Act refers to "the obtaining of property from another." 18 U. S. C. § 1951(b)(2). The Court's murky opinion seems to hold that this phrase covers nothing more than the acquisition of tangible property. No other federal court has ever construed this statute so narrowly.

For decades federal judges have uniformly given the term "property" an expansive construction that encompasses the intangible right to exercise exclusive control over the lawful use of business assets. The right to serve customers or to solicit new business is thus a protected property right. The use of violence or threats of violence to persuade the owner of a business to surrender control of such an intangible right is an appropriation of control embraced by the term "obtaining." That is the commonsense reading of the statute that other federal judges have consistently and wisely embraced in numerous cases that the Court does not discuss or even cite. Recognizing this settled definition of property, as I believe one must, the conclusion that petitioners obtained this property from respondents is amply supported by the evidence in the record.

Because this construction of the Hobbs Act has been so uniform, I only discuss a few of the more significant cases. For example, in *United States* v. *Tropiano*, 418 F. 2d 1069 (1969), the Second Circuit held that threats of physical violence to persuade the owners of a competing trash removal company to refrain from soliciting customers in certain areas violated the Hobbs Act. The court's reasoning is directly applicable to these cases:

> "The application of the Hobbs Act to the present facts of this case has been seriously challenged by the appellants upon the ground that the Government's evidence indicates that no 'property' was extorted and that there was no interference or attempted interference with interstate commerce. They assert that nothing more than 'the right to do business' in the Milford area was surrendered by Caron and that such a right was not 'property' 'obtained' by the appellants, as those terms are used in the Act. While they concede that rubbish removal accounts which are purchased and sold are probably property, they argue that the right to solicit business is amorphous and cannot be squared with the Congressional expression in the Act of 'obtaining property.' The Hobbs Act 'speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence.' Stirone v. United States, 361 U. S. 212, 215 (1960). The concept of property under the Hobbs Act, as devolved from its legislative history and numerous decisions, is not limited to physical or tangible property or things (United States v. Provenzano, 334 F. 2d 678 (3d Cir. 1964); United States v. Nedley, 255 F. 2d 350 (3d Cir. 1958)), but includes, in a broad sense, any valuable right considered as a source or element of wealth (Bianchi v. United States, 219 F. 2d 182 (8th Cir. 1955)), and does not depend upon a direct benefit being conferred on the

person who obtains the property (United States v. Green, 350 U. S. 415 (1956)).

"Obviously, Caron had a right to solicit business from anyone in any area without any territorial restrictions by the appellants and only by the exercise of such a right could Caron obtain customers whose accounts were admittedly valuable. . . . The right to pursue a lawful business including the solicitation of customers necessary to the conduct of such business has long been recognized as a property right within the protection of the Fifth and Fourteenth Amendments of the Constitution (Louis K. Ligget Co. v. Baldridge, 278 U. S. 105 (1928); cf., Duplex Printing Press Co. v. Deering, 254 U. S. 443, 465 (1921) . . . . Caron's right to solicit accounts in Milford, Connecticut constituted property within the Hobbs Act definition." *Id.*, at 1075–1076 (some citations omitted).

The *Tropiano* case's discussion of obtaining property has been cited with approval by federal courts in virtually every circuit in the country. See, *e. g.*, *United States* v. *Hathaway*, 534 F. 2d 386, 396 (CA1 1976); *United States* v. *Arena*, 180 F. 3d 380, 392 (CA2 1999); *Northeast Women's Center, Inc.* v. *McMonagle*, 868 F. 2d 1342, 1350 (CA3 1989); *United States* v. *Santoni*, 585 F. 2d 667, 673 (CA4 1978); *United States* v. *Nadaline*, 471 F. 2d 340, 344 (CA5 1973); *United States* v. *Debs*, 949 F. 2d 199, 201 (CA6 1991); *United States* v. *Lewis*, 797 F. 2d 358, 364 (CA7 1986); *United States* v. *Zemek*, 634 F. 2d 1159, 1174 (CA9 1980).[1] Its interpretation

[1] Indeed, the Ninth Circuit's discussion of the nature of property under the Hobbs Act illustrates just how settled this issue was in the Courts of Appeals:

"The concept of property under the Hobbs Act has not been limited to physical or tangible 'things.' The right to make business decisions and to solicit business free from wrongful coercion is a protected property right. *See, e. g., United States v. Santoni*, 585 F. 2d 667 (4th Cir. 1978) (right to make business decisions free from outside pressure wrongfully imposed); *United States v. Nadaline*, 471 F. 2d 340 (5th Cir.) (right to

of the term "property" is consistent with pre-Hobbs Act decisions of this Court, see *Buchanan* v. *Warley*, 245 U. S. 60, 74 (1917) (property "consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution"), the New York Court of Appeals, see *People* v. *Barondess*, 133 N. Y. 649, 31 N. E. 240 (1892), the California Supreme Court, *People* v. *Cadman*, 57 Cal. 562 (1881), and with our recent decision in *Carpenter* v. *United States*, 484 U. S. 19 (1987).

The courts that have considered the applicability of the Hobbs Act to attempts to disrupt the operations of abortion clinics have uniformly adhered to the holdings of cases like *Tropiano*. See, *e. g.*, *Libertad* v. *Welch*, 53 F. 3d 428, 438, n. 6 (CA1 1995); *Northeast Women's Center, Inc.* v. *McMonagle*, 868 F. 2d, at 1350; *United States* v. *Anderson*, 716 F. 2d 446, 447–450 (CA7 1983). Judge Kearse's endorsement of the Government's position in *United States* v. *Arena*, 180 F. 3d 380 (CA2 1999), followed this consistent line of cases. The jury had found that the defendants had engaged in "an overall strategy to cause abortion providers, particularly Planned Parenthood and Yoffa, to give up their property

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business accounts and unrealized profits) . . . . *Cf. United States v. Hathaway*, 534 F. 2d 386, 395 (1st Cir.) (rejection of narrow perception of 'property'); *Battaglia* v. *United States*, 383 F. 2d 303 (9th Cir. 1967) (right to lease space in bowling alley free from threats). . . . Chase's right to solicit business free from threatened destruction and physical harm falls within the scope of protected property rights under the Hobbs Act.

. . . . .

"Evidence of the previously described acts of intimidation and violence suffices. Appellants' objective was to induce Chase to give up a lucrative business. The fact that their threats were unsuccessful does not preclude conviction." *United States* v. *Zemek*, 634 F. 2d, at 1174 (some citations omitted).

None of the cases following *United States* v. *Tropiano*, 418 F. 2d 1069 (CA2 1969), even considered the novel suggestion that this method of obtaining control of intangible property amounted to nothing more than the nonfederal misdemeanor of "coercion," see *ante*, at 405 (majority opinion); *ante*, at 411 (GINSBURG, J., concurring).

rights to engage in the business of providing abortion services for fear of future attacks." *Id.*, at 393. Judge Kearse described how this behavior fell well within the reach of the Hobbs Act:

> "[P]roperty may be tangible or intangible, and the property at issue here was the intangible right to conduct business free from threats of violence and physical harm. . . . A perpetrator plainly may 'obtai[n]' property without receiving anything, for obtaining includes 'attain[ing] . . . disposal of,' *Webster's Third New International Dictionary* 1559 (1976); and 'disposal' includes 'the regulation of the fate . . . of something,' *id.* at 655. Thus, even when an extortionist has not taken possession of the property that the victim has relinquished, she has nonetheless 'obtain[ed]' that property if she has used violence to force her victim to abandon it. The fact that the target of a threat or attack may have refused to relinquish his property does not lessen the extortionist's liability under the Hobbs Act, for the Act, by its terms, also reaches attempts. *See* 18 U. S. C. § 1951(a); *McLaughlin v. Anderson*, 962 F. 2d 187, 194 (2d Cir. 1992).
>
> "In sum, where the property in question is the victim's right to conduct a business free from threats of violence and physical harm, a person who has committed or threatened violence or physical harm in order to induce abandonment of that right has obtained, or attempted to obtain, property within the meaning of the Hobbs Act." *Id.*, at 394.

In my opinion Judge Kearse's analysis of the issue is manifestly correct. Even if the issue were close, however, three additional considerations provide strong support for her conclusion. First, the uniform construction of the statute that has prevailed throughout the country for decades should remain the law unless and until Congress decides to amend the

statute. See *Reves* v. *Ernst & Young*, 494 U. S. 56, 74 (1990) (STEVENS, J., concurring); *Chesapeake & Ohio R. Co.* v. *Schwalb*, 493 U. S. 40, 51 (1989) (STEVENS, J., concurring in judgment); *McNally* v. *United States*, 483 U. S. 350, 376–377 (1987) (STEVENS, J., dissenting);[2] *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 268–269 (1987) (STEVENS, J., concurring in part and dissenting in part). Second, both this Court and all other federal courts have consistently identified the Hobbs Act as a statute that Congress intended to be given a broad construction. See, *e. g.*, *Stirone* v. *United States*, 361 U. S. 212 (1960); *United States* v. *Staszcuk*, 517 F. 2d 53 (CA7 1975). Third, given the fact that Congress has enacted specific legislation responsive to the concerns that gave rise to these cases,[3] the principal beneficiaries of the Court's dramatic retreat from the position that federal prosecutors and federal courts have maintained throughout the history of this important statute will certainly be the class of professional criminals whose conduct persuaded Congress that the public needed federal protection from extortion.[4]

I respectfully dissent.

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[2] Congress corrected the Court's narrow reading of the mail fraud statute in *McNally* by passing 18 U. S. C. § 1346, which overruled *McNally*. See, *e. g.*, *United States* v. *Bortnovsky*, 879 F. 2d 30, 39 (CA2 1989) ("Section 1346 . . . overrules *McNally*"). Of course, Congress remains free to correct the Court's error in these cases as well.

[3] See Freedom of Access to Clinic Entrances Act of 1994, 108 Stat. 694.

[4] The concern expressed by JUSTICE GINSBURG, *ante*, at 411, 412, is misguided because an affirmance in these cases would not expand the coverage of the Racketeer Influenced and Corrupt Organizations Act but would preserve the Federal Government's ability to bring criminal prosecutions for violent conduct that was, until today, prohibited by the Hobbs Act.

Syllabus

MOSELEY ET AL., DBA VICTOR'S LITTLE SECRET *v.* V SECRET CATALOGUE, INC., ET AL.

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

No. 01–1015. Argued November 12, 2002—Decided March 4, 2003

An army colonel sent a copy of an advertisement for petitioners' retail store, "Victor's Secret," to respondents, affiliated corporations that own the VICTORIA'S SECRET trademarks, because he saw it as an attempt to use a reputable trademark to promote unwholesome, tawdry merchandise. Respondents asked petitioners to discontinue using the name, but petitioners responded by changing the store's name to "Victor's Little Secret." Respondents then filed suit, alleging, *inter alia*, "the dilution of famous marks" under the Federal Trademark Dilution Act (FTDA). This 1995 amendment to the Trademark Act of 1946 describes the factors that determine whether a mark is "distinctive and famous," 15 U. S. C. § 1125(c)(1), and defines "dilution" as "the lessening of the capacity of a famous mark to identify and distinguish goods or services," § 1127. To support their claims that petitioners' conduct was likely to "blur and erode" their trademark's distinctiveness and "tarnish" its reputation, respondents presented an affidavit from a marketing expert who explained the value of respondents' mark but expressed no opinion concerning the impact of petitioners' use of "Victor's Little Secret" on that value. The District Court granted respondents summary judgment on the FTDA claim, and the Sixth Circuit affirmed, finding that respondents' mark was "distinctive" and that the evidence established "dilution" even though no actual harm had been proved. It also rejected the Fourth Circuit's conclusion that the FTDA "requires proof that (1) a defendant has [used] a junior mark sufficiently similar to the famous mark to evoke in . . . consumers a mental association of the two that (2) has caused (3) actual economic harm to the famous mark's economic value by lessening its former selling power as an advertising agent for its goods or services," *Ringling Bros.-Barnum & Bailey Combined Shows, Inc.* v. *Utah Div. of Travel Dev.*, 170 F. 3d 449, 461.

Held:

1. The FTDA requires proof of actual dilution. Pp. 428–434.

(a) Unlike traditional infringement law, the prohibitions against trademark dilution are not the product of common-law development, and are not motivated by an interest in protecting consumers. The approximately 25 state trademark dilution laws predating the FTDA refer both

to injury to business reputation (tarnishment) and to dilution of the distinctive quality of a trademark or trade name (blurring). The FTDA's legislative history mentions that the statute's purpose is to protect famous trademarks from subsequent uses that blur the mark's distinctiveness or tarnish or disparage it, even absent a likelihood of confusion. Pp. 428–431.

(b) Respondents' mark is unquestionably valuable, and petitioners have not challenged the conclusion that it is "famous." Nor do they contend that protection is confined to identical uses of famous marks or that the statute should be construed more narrowly in a case such as this. They do contend, however, that the statute requires proof of actual harm, rather than mere "likelihood" of harm. The contrast between the state statutes and the federal statute sheds light on this precise question. The former repeatedly refer to a "likelihood" of harm, rather than a completed harm, but the FTDA provides relief if another's commercial use of a mark or trade name "*causes dilution* of the [mark's] distinctive quality," § 1125(c)(1) (emphasis added). Thus, it unambiguously requires an actual dilution showing. This conclusion is confirmed by the FTDA's "dilution" definition itself, § 1127. That does not mean that the consequences of dilution, such as an actual loss of sales or profits, must also be proved. This Court disagrees with the Fourth Circuit's *Ringling Bros.* decision to the extent it suggests otherwise, but agrees with that court's conclusion that, at least where the marks at issue are not identical, the mere fact that consumers mentally associate the junior user's mark with a famous mark is not sufficient to establish actionable dilution. Such association will not necessarily reduce the famous mark's capacity to identify its owner's goods, the FTDA's dilution requirement. Pp. 432–434.

2. The evidence in this case is insufficient to support summary judgment on the dilution count. There is a complete absence of evidence of any lessening of the VICTORIA'S SECRET mark's capacity to identify and distinguish goods or services sold in Victoria's Secret stores or advertised in its catalogs. The officer who saw the ad directed his offense entirely at petitioners, not respondents. And respondents' expert said nothing about the impact of petitioners' name on the strength of respondents' mark. Any difficulties of proof that may be entailed in demonstrating actual dilution are not an acceptable reason for dispensing with proof of an essential element of a statutory violation. P. 434.

259 F. 3d 464, reversed and remanded.

STEVENS, J., delivered the opinion for a unanimous Court with respect to Parts I, II, and IV, and the opinion of the Court with respect to Part III,

in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a concurring opinion, *post,* p. 435.

James R. Higgins, Jr., argued the cause for petitioners. With him on the briefs was *Scot A. Duvall.*

Walter Dellinger argued the cause for respondents. With him on the brief was *Jonathan D. Hacker.*

Deputy Solicitor General Wallace argued the cause for the United States as *amicus curiae.* With him on the brief were *Solicitor General Olson, Assistant Attorney General McCallum, Irving L. Gornstein, Anthony J. Steinmeyer, Mark S. Davies, John M. Whealan, Nancy C. Slutter, Cynthia C. Lynch,* and *James R. Hughes.**

JUSTICE STEVENS delivered the opinion of the Court.†

In 1995 Congress amended § 43 of the Trademark Act of 1946, 15 U. S. C. § 1125, to provide a remedy for the "dilution of famous marks." 109 Stat. 985–986. That amendment, known as the Federal Trademark Dilution Act (FTDA), describes the factors that determine whether a mark is "dis-

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**Peter Jaszi* filed a brief for Public Knowledge et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *Robert E. Hirshon, Robert W. Sacoff,* and *Uli Widmaier;* for the American Intellectual Property Law Association by *Jonathan Hudis, Amy C. Sullivan,* and *Roger W. Parkhurst;* for Best Western International, Inc., et al. by *Avraham Azrieli, Joel W. Nomkin, Charles A. Blanchard,* and *Suzanne R. Scheiner;* for Intel Corp. by *Jerrold J. Ganzfried, Mark I. Levy,* and *Thomas L. Casagrande;* for Andrew Beckerman-Rodau et al. by *Mark A. Lemley, pro se;* for the Intellectual Property Owners Association by *Laurence R. Hefter, Elizabeth McGoogan,* and *Ronald E. Myrick;* for the International Trademark Association by *Theodore H. Davis, Jr.,* and *Marie V. Driscoll;* and for Ringling Bros.-Barnum & Bailey Combined Shows, Inc., et al. by *Robert A. Long, Jr.*

Malla Pollack, pro se, filed a brief as *amicus curiae.*

†JUSTICE SCALIA joins all but Part III of this opinion.

tinctive and famous," and defines the term "dilution" as "the lessening of the capacity of a famous mark to identify and distinguish goods or services."[1] The question we granted

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[1] The FTDA provides: "SEC. 3. REMEDIES FOR DILUTION OF FAMOUS MARKS.

"(a) REMEDIES.—Section 43 of the Trademark Act of 1946 (15 U. S. C. 1125) is amended by adding at the end the following new subsection:

"'(c)(1) The owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this subsection. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to—

"'(A) the degree of inherent or acquired distinctiveness of the mark;

"'(B) the duration and extent of use of the mark in connection with the goods or services with which the mark is used;

"'(C) the duration and extent of advertising and publicity of the mark;

"'(D) the geographical extent of the trading area in which the mark is used;

"'(E) the channels of trade for the goods or services with which the mark is used;

"'(F) the degree of recognition of the mark in the trading areas and channels of trade used by the marks' owner and the person against whom the injunction is sought;

"'(G) the nature and extent of use of the same or similar marks by third parties; and

"'(H) whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

"'(2) In an action brought under this subsection, the owner of the famous mark shall be entitled only to injunctive relief unless the person against whom the injunction is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner of the famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36, subject to the discretion of the court and the principles of equity.

"'(3) The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register shall be a complete bar to an action against that person, with respect to that mark, that is brought by another person under the common

certiorari to decide is whether objective proof of actual injury to the economic value of a famous mark (as opposed to a presumption of harm arising from a subjective "likelihood of dilution" standard) is a requisite for relief under the FTDA.

I

Petitioners, Victor and Cathy Moseley, own and operate a retail store named "Victor's Little Secret" in a strip mall in Elizabethtown, Kentucky. They have no employees.

Respondents are affiliated corporations that own the VICTORIA'S SECRET trademark and operate over 750 Victoria's Secret stores, two of which are in Louisville, Kentucky, a short drive from Elizabethtown. In 1998 they spent over $55 million advertising "the VICTORIA'S SECRET brand—one of moderately priced, high quality, attractively designed lingerie sold in a store setting designed to look like a wom-

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law or a statute of a State and that seeks to prevent dilution of the distinctiveness of a mark, label, or form of advertisement.

"'(4) The following shall not be actionable under this section:

"'(A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.

"'(B) Noncommercial use of a mark.

"'(C) All forms of news reporting and news commentary.'

"(b) CONFORMING AMENDMENT.—The heading for title VIII of the Trademark Act of 1946 is amended by striking 'AND FALSE DESCRIPTIONS' and inserting ', FALSE DESCRIPTIONS, AND DILUTION.'

"SEC. 4. DEFINITION.

"Section 45 of the Trademark Act of 1946 (15 U. S. C. 1127) is amended by inserting after the paragraph defining when a mark shall be deemed to be 'abandoned' the following:

"'The term "dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of—

"'(1) competition between the owner of the famous mark and other parties, or

"'(2) likelihood of confusion, mistake, or deception.'" 109 Stat. 985–986.

[a]n's bedroom." App. 167, 170. They distribute 400 million copies of the Victoria's Secret catalog each year, including 39,000 in Elizabethtown. In 1998 their sales exceeded $1.5 billion.

In the February 12, 1998, edition of a weekly publication distributed to residents of the military installation at Fort Knox, Kentucky, petitioners advertised the "GRAND OPENING Just in time for Valentine's Day!" of their store "VICTOR'S SECRET" in nearby Elizabethtown. The ad featured "Intimate Lingerie *for every woman*"; "Romantic Lighting"; "Lycra Dresses"; "Pagers"; and "Adult Novelties/Gifts." *Id.*, at 209. An army colonel, who saw the ad and was offended by what he perceived to be an attempt to use a reputable company's trademark to promote the sale of "unwholesome, tawdry merchandise," sent a copy to respondents. *Id.*, at 210. Their counsel then wrote to petitioners stating that their choice of the name "Victor's Secret" for a store selling lingerie was likely to cause confusion with the well-known VICTORIA'S SECRET mark and, in addition, was likely to "dilute the distinctiveness" of the mark. *Id.*, at 190–191. They requested the immediate discontinuance of the use of the name "and any variations thereof." *Ibid.* In response, petitioners changed the name of their store to "Victor's Little Secret." Because that change did not satisfy respondents,[2] they promptly filed this action in Federal District Court.

The complaint contained four separate claims: (1) for trademark infringement alleging that petitioners' use of their trade name was "likely to cause confusion and/or mistake in violation of 15 U. S. C. § 1114(1)"; (2) for unfair competition alleging misrepresentation in violation of § 1125(a);

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[2] After being advised of a proposal to change the store name to "VICTOR'S LITTLE SECRETS," respondents' counsel requested detailed information about the store in order to consider whether that change "would be acceptable." App. 13–14. Respondents filed suit two months after this request.

(3) for "federal dilution" in violation of the FTDA; and (4) for trademark infringement and unfair competition in violation of the common law of Kentucky. *Id.*, at 15, 20–23. In the dilution count, the complaint alleged that petitioners' conduct was "likely to blur and erode the distinctiveness" and "tarnish the reputation" of the VICTORIA'S SECRET trademark. *Ibid.*

After discovery the parties filed cross-motions for summary judgment. The record contained uncontradicted affidavits and deposition testimony describing the vast size of respondents' business, the value of the VICTORIA'S SECRET name, and descriptions of the items sold in the respective parties' stores. Respondents sell a "complete line of lingerie" and related items, each of which bears a VICTORIA'S SECRET label or tag.[3] Petitioners sell a wide variety of items, including adult videos, "adult novelties," and lingerie.[4] Victor Moseley stated in an affidavit that women's lingerie represented only about five percent of their sales. *Id.*, at 131. In support of their motion for summary judgment, respondents submitted an affidavit by an expert in marketing who explained "the enormous value" of respondents' mark. *Id.*, at 195–205. Neither he, nor any other witness, expressed any opinion concerning the impact, if any,

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[3] Respondents described their business as follows: "Victoria's Secret stores sell a complete line of lingerie, women's undergarments and nightwear, robes, caftans and kimonos, slippers, sachets, lingerie bags, hanging bags, candles, soaps, cosmetic brushes, atomizers, bath products and fragrances." *Id.*, at 168.

[4] In answer to an interrogatory, petitioners stated that they "sell novelty action clocks, patches, temporary tattoos, stuffed animals, coffee mugs, leather biker wallets, zippo lighters, diet formula, diet supplements, jigsaw puzzles, whyss, handcufs *[sic]*, hosiery bubble machines, greeting cards, calendars, incense burners, car air fresheners, sunglasses, ball caps, jewelry, candles, lava lamps, blacklights, fiber optic lights, rock and roll prints, lingerie, pagers, candy, adult video tapes, adult novelties, t-shirts, etc." *Id.*, at 87.

of petitioners' use of the name "Victor's Little Secret" on that value.

Finding that the record contained no evidence of actual confusion between the parties' marks, the District Court concluded that "no likelihood of confusion exists as a matter of law" and entered summary judgment for petitioners on the infringement and unfair competition claims. Civ. Action No. 3:98CV–395–S (WD Ky., Feb. 9, 2000), App. to Pet. for Cert. 28a, 37a. With respect to the FTDA claim, however, the court ruled for respondents.

Noting that petitioners did not challenge Victoria's Secret's claim that its mark is "famous," the only question it had to decide was whether petitioners' use of their mark diluted the quality of respondents' mark. Reasoning from the premise that dilution "corrodes" a trademark either by "'blurring its product identification or by damaging positive associations that have attached to it,'" the court first found the two marks to be sufficiently similar to cause dilution, and then found "that Defendants' mark dilutes Plaintiffs' mark because of its tarnishing effect upon the Victoria's Secret mark." *Id.*, at 38a–39a (quoting *Ameritech, Inc.* v. *American Info. Technologies Corp.*, 811 F. 2d 960, 965 (CA6 1987)). It therefore enjoined petitioners "from using the mark 'Victor's Little Secret' on the basis that it causes dilution of the distinctive quality of the Victoria's Secret mark." App. to Pet. for Cert. 38a–39a. The court did not, however, find that any "blurring" had occurred. *Ibid.*

The Court of Appeals for the Sixth Circuit affirmed. 259 F. 3d 464 (2001). In a case decided shortly after the entry of the District Court's judgment in this case, the Sixth Circuit had adopted the standards for determining dilution under the FTDA that were enunciated by the Second Circuit in *Nabisco, Inc.* v. *PF Brands, Inc.*, 191 F. 3d 208 (1999). See *Kellogg Co.* v. *Exxon Corp.*, 209 F. 3d 562 (CA6 2000). In order to apply those standards, it was necessary to discuss

two issues that the District Court had not specifically addressed—whether respondents' mark is "distinctive,"[5] and whether relief could be granted before dilution has actually occurred.[6] With respect to the first issue, the court rejected the argument that Victoria's Secret could not be distinctive because "secret" is an ordinary word used by hundreds of lingerie concerns. The court concluded that the entire mark was "arbitrary and fanciful" and therefore deserving of a high level of trademark protection. 259 F. 3d, at 470.[7] On

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[5] "It is quite clear that the statute intends distinctiveness, in addition to fame, as an essential element. The operative language defining the tort requires that 'the [junior] person's . . . use . . . caus[e] dilution of the distinctive quality of the [senior] mark.' 15 U. S. C. § 1125(c)(1). There can be no dilution of a mark's distinctive quality unless the mark is distinctive." *Nabisco, Inc.* v. *PF Brands, Inc.*, 191 F. 3d 208, 216 (CA2 1999).

[6] The Second Circuit explained why it did not believe "actual dilution" need be proved:

"Relying on a recent decision by the Fourth Circuit, Nabisco also asserts that proof of dilution under the FTDA requires proof of an 'actual, consummated harm.' *Ringling Bros.-Barnum & Bailey Combined Shows, Inc.* v. *Utah Division of Travel Dev.*, 170 F. 3d 449, 464 (4th Cir. 1999). We reject the argument because we disagree with the Fourth Circuit's interpretation of the statute.

"It is not clear which of two positions the Fourth Circuit adopted by its requirement of proof of 'actual dilution.' *Id.* The narrower position would be that courts may not infer dilution from 'contextual factors (degree of mark and product similarity, etc.),' but must instead rely on evidence of 'actual loss of revenues' or the 'skillfully constructed consumer survey.' *Id.* at 457, 464–65. This strikes us as an arbitrary and unwarranted limitation on the methods of proof." *Id.*, at 223.

[7] "In this case, for example, although the word 'secret' may provoke some intrinsic association with prurient interests, it is not automatically linked in the ordinary human experience with lingerie. 'Secret' is not particularly descriptive of bras and hosiery. Nor is there anything about the combination of the possessive 'Victoria's' and 'secret' that automatically conjures thought of women's underwear-except, of course, in the context of plaintiff's line of products. Hence, we conclude that the 'Victoria's Secret' mark ranks with those that are 'arbitrary and fanciful' and is therefore deserving of a high level of trademark protection. Although the district court applied a slightly different test from the one now established

the second issue, the court relied on a distinction suggested by this sentence in the House Report: "Confusion leads to immediate injury, while dilution is an infection, which if allowed to spread, will inevitably destroy the advertising value of the mark." H. R. Rep. No. 104–374, p. 3 (1995). This statement, coupled with the difficulty of proving actual harm, lent support to the court's ultimate conclusion that the evidence in this case sufficiently established "dilution." 259 F. 3d, at 475–477. In sum, the Court of Appeals held:

> "While no consumer is likely to go to the Moseleys' store expecting to find Victoria's Secret's famed Miracle Bra, consumers who hear the name 'Victor's Little Secret' are likely automatically to think of the more famous store and link it to the Moseleys' adult-toy, gag gift, and lingerie shop. This, then, is a classic instance of dilution by tarnishing (associating the Victoria's Secret name with sex toys and lewd coffee mugs) and by blurring (linking the chain with a single, unauthorized establishment). Given this conclusion, it follows that Victoria's Secret would prevail in a dilution analysis, even without an exhaustive consideration of all ten of the *Nabisco* factors." *Id.*, at 477.[8]

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in this circuit, the court would undoubtedly have reached the same result under the *Nabisco* test. Certainly, we cannot say that the court erred in finding that the preliminary factors of a dilution claim had been met by Victoria's Secret." 259 F. 3d, at 470–471.

[8] The court had previously noted that the "Second Circuit has developed a list of ten factors used to determine if dilution has, in fact, occurred, while describing them as a 'nonexclusive list' to 'develop gradually over time' and with the particular facts of each case. Those factors are: distinctiveness; similarity of the marks; 'proximity of the products and the likelihood of bridging the gap;' 'interrelationship among the distinctiveness of the senior mark, the similarity of the junior mark, and the proximity of the products;' 'shared consumers and geographic limitations;' 'sophistication of consumers;' actual confusion; 'adjectival or referential quality of the junior use;' 'harm to the junior user and delay by the senior user;' and the 'effect of [the] senior's prior laxity in protecting the mark.'" *Id.*, at 476 (quoting *Nabisco*, 191 F. 3d, at 217–222).

In reaching that conclusion the Court of Appeals expressly rejected the holding of the Fourth Circuit in *Ringling Bros.-Barnum & Bailey Combined Shows, Inc.* v. *Utah Div. of Travel Development*, 170 F. 3d 449 (1999). In that case, which involved a claim that Utah's use on its license plates of the phrase "greatest *snow* on earth" was causing dilution of the "greatest *show* on earth," the court had concluded "that to establish dilution of a famous mark under the federal Act requires proof that (1) a defendant has made use of a junior mark sufficiently similar to the famous mark to evoke in a relevant universe of consumers a mental association of the two that (2) has caused (3) actual economic harm to the famous mark's economic value by lessening its former selling power as an advertising agent for its goods or services." *Id.*, at 461 (emphasis added). Because other Circuits have also expressed differing views about the "actual harm" issue, we granted certiorari to resolve the conflict. 535 U. S. 985 (2002).

II

Traditional trademark infringement law is a part of the broader law of unfair competition, see *Hanover Star Milling Co.* v. *Metcalf*, 240 U. S. 403, 413 (1916), that has its sources in English common law, and was largely codified in the Trademark Act of 1946 (Lanham Act). See B. Pattishall, D. Hilliard, & J. Welch, Trademarks and Unfair Competition 2 (4th ed. 2000) ("The United States took the [trademark and unfair competition] law of England as its own"). That law broadly prohibits uses of trademarks, trade names, and trade dress that are likely to cause confusion about the source of a product or service. See 15 U. S. C. §§ 1114, 1125(a)(1)(A). Infringement law protects consumers from being misled by the use of infringing marks and also protects producers from unfair practices by an "imitating competitor." *Qualitex Co.* v. *Jacobson Products Co.*, 514 U. S. 159, 163–164 (1995).

Because respondents did not appeal the District Court's adverse judgment on counts 1, 2, and 4 of their complaint,

we decide the case on the assumption that the Moseleys' use of the name "Victor's Little Secret" neither confused any consumers or potential consumers, nor was likely to do so. Moreover, the disposition of those counts also makes it appropriate to decide the case on the assumption that there was no significant competition between the adversaries in this case. Neither the absence of any likelihood of confusion nor the absence of competition, however, provides a defense to the statutory dilution claim alleged in count 3 of the complaint.

Unlike traditional infringement law, the prohibitions against trademark dilution are not the product of common-law development, and are not motivated by an interest in protecting consumers. The seminal discussion of dilution is found in Frank Schechter's 1927 law review article concluding "that the preservation of the uniqueness of a trademark should constitute the only rational basis for its protection." Rational Basis of Trademark Protection, 40 Harv. L. Rev. 813, 831. Schechter supported his conclusion by referring to a German case protecting the owner of the well-known trademark "Odol" for mouthwash from use on various non-competing steel products.[9] That case, and indeed the principal focus of the Schechter article, involved an established arbitrary mark that had been "added to rather than withdrawn from the human vocabulary" and an infringement that made use of the identical mark. *Id.*, at 829.[10]

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[9] The German court "held that the use of the mark, 'Odol' even on non-competing goods was '*gegen die guten Sitten*,' pointing out that, when the public hears or reads the word 'Odol,' it thinks of the complainant's mouth wash, and that an article designated with the name 'Odol' leads the public to assume that it is of good quality. Consequently, concludes the court, complainant has 'the utmost interest in seeing that its mark is not diluted *[verwässert]:* it would lose in selling power if everyone used it as the designation of his goods.'" 40 Harv. L. Rev., at 831–832.

[10] Schecter discussed this distinction at length: "The rule that arbitrary, coined or fanciful marks or names should be given a much broader degree of protection than symbols, words or phrases in common use would appear

Some 20 years later Massachusetts enacted the first state statute protecting trademarks from dilution. It provided:

> "Likelihood of injury to business reputation or of dilution of the distinctive quality of a trade name or trademark shall be a ground for injunctive relief in cases of trade-mark infringement or unfair competition notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services." 1947 Mass. Acts p. 300, ch. 307.

Notably, that statute, unlike the "Odol" case, prohibited both the likelihood of "injury to business reputation" and "dilution." It thus expressly applied to both "tarnishment" and "blurring." At least 25 States passed similar laws in the decades before the FTDA was enacted in 1995. See Restatement (Third) of Unfair Competition § 25, Statutory Note (1995).

III

In 1988, when Congress adopted amendments to the Lanham Act, it gave consideration to an antidilution provision.

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to be entirely sound. Such trademarks or tradenames as 'Blue Ribbon,' used, with or without registration, for all kinds of commodities or services, more than sixty times; 'Simplex' more than sixty times; 'Star,' as far back as 1898, nearly four hundred times; 'Anchor,' already registered over one hundred fifty times in 1898; 'Bull Dog,' over one hundred times by 1923; 'Gold Medal,' sixty-five times; '3-in-1' and '2-in-1,' seventy-nine times; 'Nox-all,' fifty times; 'Universal,' over thirty times; 'Lily White' over twenty times;—all these marks and names have, at this late date, very little distinctiveness in the public mind, and in most cases suggest merit, prominence or other qualities of goods or services in general, rather than the fact that the product or service, in connection with which the mark or name is used, emanates from a particular source. On the other hand, 'Rolls-Royce,' 'Aunt Jemima's,' 'Kodak,' 'Mazda,' 'Corona,' 'Nujol,' and 'Blue Goose,' are coined, arbitrary or fanciful words or phrases that have been added to rather than withdrawn from the human vocabulary by their owners, and have, from the very beginning, been associated in the public mind with a particular product, not with a variety of products, and have created in the public consciousness an impression or symbol of the excellence of the particular product in question." *Id.*, at 828–829.

During the hearings on the 1988 amendments, objections to that provision based on a concern that it might have applied to expression protected by the First Amendment were voiced and the provision was deleted from the amendments. H. R. Rep. No. 100–1028 (1988). The bill, H. R. 1295, 104th Cong., 1st Sess., that was introduced in the House in 1995, and ultimately enacted as the FTDA, included two exceptions designed to avoid those concerns: a provision allowing "fair use" of a registered mark in comparative advertising or promotion, and the provision that noncommercial use of a mark shall not constitute dilution. See 15 U. S. C. § 1125(c)(4).

On July 19, 1995, the Subcommittee on Courts and Intellectual Property of the House Judiciary Committee held a 1-day hearing on H. R. 1295. No opposition to the bill was voiced at the hearing and, with one minor amendment that extended protection to unregistered as well as registered marks, the subcommittee endorsed the bill and it passed the House unanimously. The committee's report stated that the "purpose of H. R. 1295 is to protect famous trademarks from subsequent uses that blur the distinctiveness of the mark or tarnish or disparage it, even in the absence of a likelihood of confusion." H. R. Rep. No. 104–374, p. 2 (1995). As examples of dilution, it stated that "the use of DUPONT shoes, BUICK aspirin, and KODAK pianos would be actionable under this legislation." *Id.,* at 3. In the Senate an identical bill, S. 1513, 104th Cong., 1st Sess., was introduced on December 29, 1995, and passed on the same day by voice vote without any hearings. In his explanation of the bill, Senator Hatch also stated that it was intended "to protect famous trademarks from subsequent uses that blur the distinctiveness of the mark or tarnish or disparage it," and referred to the Dupont Shoes, Buick aspirin, and Kodak piano examples, as well as to the Schechter law review article. 141 Cong. Rec. 38559–38561 (1995).

IV

The VICTORIA'S SECRET mark is unquestionably valuable and petitioners have not challenged the conclusion that it qualifies as a "famous mark" within the meaning of the statute. Moreover, as we understand their submission, petitioners do not contend that the statutory protection is confined to identical uses of famous marks, or that the statute should be construed more narrowly in a case such as this. Even if the legislative history might lend some support to such a contention, it surely is not compelled by the statutory text.

The District Court's decision in this case rested on the conclusion that the name of petitioners' store "tarnished" the reputation of respondents' mark, and the Court of Appeals relied on both "tarnishment" and "blurring" to support its affirmance. Petitioners have not disputed the relevance of tarnishment, Tr. of Oral Arg. 5–7, presumably because that concept was prominent in litigation brought under state antidilution statutes and because it was mentioned in the legislative history. Whether it is actually embraced by the statutory text, however, is another matter. Indeed, the contrast between the state statutes, which expressly refer to both "injury to business reputation" and to "dilution of the distinctive quality of a trade name or trademark," and the federal statute which refers only to the latter, arguably supports a narrower reading of the FTDA. See Klieger, Trademark Dilution: The Whittling Away of the Rational Basis for Trademark Protection, 58 U. Pitt. L. Rev. 789, 812–813, and n. 132 (1997).

The contrast between the state statutes and the federal statute, however, sheds light on the precise question that we must decide. For those state statutes, like several provisions in the federal Lanham Act, repeatedly refer to a "likelihood" of harm, rather than to a completed harm. The relevant text of the FTDA, quoted in full in n. 1, *supra,* provides that "the owner of a famous mark" is entitled to injunctive

relief against another person's commercial use of a mark or trade name if that use "*causes dilution* of the distinctive quality" of the famous mark. 15 U. S. C. § 1125(c)(1) (emphasis added). This text unambiguously requires a showing of actual dilution, rather than a likelihood of dilution.

This conclusion is fortified by the definition of the term "dilution" itself. That definition provides:

> "The term 'dilution' means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of—
>
> "(1) competition between the owner of the famous mark and other parties, or
>
> "(2) likelihood of confusion, mistake, or deception." § 1127.

The contrast between the initial reference to an actual "lessening of the capacity" of the mark, and the later reference to a "likelihood of confusion, mistake, or deception" in the second caveat confirms the conclusion that actual dilution must be established.

Of course, that does not mean that the consequences of dilution, such as an actual loss of sales or profits, must also be proved. To the extent that language in the Fourth Circuit's opinion in the *Ringling Bros.* case suggests otherwise, see 170 F. 3d, at 460–465, we disagree. We do agree, however, with that court's conclusion that, at least where the marks at issue are not identical, the mere fact that consumers mentally associate the junior user's mark with a famous mark is not sufficient to establish actionable dilution. As the facts of that case demonstrate, such mental association will not necessarily reduce the capacity of the famous mark to identify the goods of its owner, the statutory requirement for dilution under the FTDA. For even though Utah drivers may be reminded of the circus when they see a license plate referring to the "greatest *snow* on earth," it by no means follows that they will associate "the greatest show on earth"

with skiing or snow sports, or associate it less strongly or exclusively with the circus. "Blurring" is not a necessary consequence of mental association. (Nor, for that matter, is "tarnishing.")

The record in this case establishes that an army officer who saw the advertisement of the opening of a store named "Victor's Secret" did make the mental association with "Victoria's Secret," but it also shows that he did not therefore form any different impression of the store that his wife and daughter had patronized. There is a complete absence of evidence of any lessening of the capacity of the VICTORIA'S SECRET mark to identify and distinguish goods or services sold in Victoria's Secret stores or advertised in its catalogs. The officer was offended by the ad, but it did not change his conception of Victoria's Secret. His offense was directed entirely at petitioners, not at respondents. Moreover, the expert retained by respondents had nothing to say about the impact of petitioners' name on the strength of respondents' mark.

Noting that consumer surveys and other means of demonstrating actual dilution are expensive and often unreliable, respondents and their *amici* argue that evidence of an actual "lessening of the capacity of a famous mark to identify and distinguish goods or services," § 1127, may be difficult to obtain. It may well be, however, that direct evidence of dilution such as consumer surveys will not be necessary if actual dilution can reliably be proved through circumstantial evidence—the obvious case is one where the junior and senior marks are identical. Whatever difficulties of proof may be entailed, they are not an acceptable reason for dispensing with proof of an essential element of a statutory violation. The evidence in the present record is not sufficient to support the summary judgment on the dilution count. The judgment is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KENNEDY, concurring.

As of this date, few courts have reviewed the statute we are considering, the Federal Trademark Dilution Act, 15 U. S. C. § 1125(c), and I agree with the Court that the evidentiary showing required by the statute can be clarified on remand. The conclusion that the VICTORIA'S SECRET mark is a famous mark has not been challenged throughout the litigation, *ante*, at 425, 432, and seems not to be in question. The remaining issue is what factors are to be considered to establish dilution.

For this inquiry, considerable attention should be given, in my view, to the word "capacity" in the statutory phrase that defines dilution as "the lessening of the capacity of a famous mark to identify and distinguish goods or services." 15 U. S. C. § 1127. When a competing mark is first adopted, there will be circumstances when the case can turn on the probable consequences its commercial use will have for the famous mark. In this respect, the word "capacity" imports into the dilution inquiry both the present and the potential power of the famous mark to identify and distinguish goods, and in some cases the fact that this power will be diminished could suffice to show dilution. Capacity is defined as "the power or ability to hold, receive, or accommodate." Webster's Third New International Dictionary 330 (1961); see also Webster's New International Dictionary 396 (2d ed. 1949) ("Power of receiving, containing, or absorbing"); 2 Oxford English Dictionary 857 (2d ed. 1989) ("Ability to receive or contain; holding power"); American Heritage Dictionary 275 (4th ed. 2000) ("The ability to receive, hold, or absorb"). If a mark will erode or lessen the power of the famous mark to give customers the assurance of quality and the full satisfaction they have in knowing they have purchased goods bearing the famous mark, the elements of dilution may be established.

Diminishment of the famous mark's capacity can be shown by the probable consequences flowing from use or adoption

of the competing mark. This analysis is confirmed by the statutory authorization to obtain injunctive relief. 15 U. S. C. § 1125(c)(2). The essential role of injunctive relief is to "prevent future wrong, although no right has yet been violated." *Swift & Co.* v. *United States,* 276 U. S. 311, 326 (1928). Equity principles encourage those who are injured to assert their rights promptly. A holder of a famous mark threatened with diminishment of the mark's capacity to serve its purpose should not be forced to wait until the damage is done and the distinctiveness of the mark has been eroded.

In this case, the District Court found that petitioners' trademark had tarnished the VICTORIA'S SECRET mark. App. to Pet. for Cert. 38a–39a. The Court of Appeals affirmed this conclusion and also found dilution by blurring. 259 F. 3d 464, 477 (CA6 2001). The Court's opinion does not foreclose injunctive relief if respondents on remand present sufficient evidence of either blurring or tarnishment.

With these observations, I join the opinion of the Court.

Syllabus

BOEING CO. ET AL. *v.* UNITED STATES

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

No. 01–1209. Argued December 9, 2002—Decided March 4, 2003*

Under a 1971 statute providing special tax treatment for export sales made by an American manufacturer through a subsidiary that qualified as a "domestic international sales corporation" (DISC), no tax is payable on the DISC's retained income until it is distributed. See 26 U. S. C. §§ 991–997. The statute thus provides an incentive to maximize the DISC's share—and to minimize the parent's share—of the parties' aggregate income from export sales. The statute provides three alternative ways for a parent to divert a limited portion of its income to the DISC. See §§ 994(a)(1)–(3). The alternative that The Boeing Company chose limited the DISC's taxable income to a little over half of the parties "combined taxable income" (CTI). In 1984, the "foreign sales corporation" (FSC) provisions replaced the DISC provisions. As under the DISC regime, it is in the parent's interest to maximize the FSC's share of the taxable income generated by export sales. Because most of the differences between these regimes are immaterial to this suit, the Court's analysis focuses mainly on the DISC provisions. The Treasury Regulation at issue, 26 CFR § 1.861–8(e)(3) (1979), governs the accounting for research and development (R&D) expenses when a taxpayer elects to take a current deduction, telling the taxpaying parent and its DISC "what" must be treated as a cost when calculating CTI, and "how" those costs should be (a) allocated among different products and (b) apportioned between the DISC and its parent. With respect to the "what" question, the regulation includes a list of Standard Industrial Classification (SIC) categories (*e. g.*, transportation equipment) and requires that R&D for any product within the same category as the exported product be taken into account. The regulations use gross receipts from sales as the basis for both "how" questions. Boeing organized its internal operations along product lines (*e. g.*, aircraft model 767) for management and accounting purposes, each of which constituted a separate "program" within the organization; and $3.6 billion of its R&D expenses were spent on "Company Sponsored Product Development," *i. e.*, product-specific research. Boeing's accountants treated all

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*Together with No. 01–1382, *United States* v. *Boeing Sales Corp. et al.*, also on certiorari to the same court.

Company Sponsored costs as directly related to a single program and unrelated to any other program. Because nearly half of the Company Sponsored R&D at issue was allocated to programs that had no sales in the year in which the research was conducted, that amount was deducted by Boeing currently in calculating its taxable income for the years at issue, but never affected the calculation of the CTI derived by Boeing and its DISC from export sales. The Internal Revenue Service reallocated Boeing's Company Sponsored R&D costs for 1979 to 1987, thereby decreasing the untaxed profits of its export subsidiaries and increasing its taxable profits on export sales. After paying the additional taxes, Boeing filed this refund suit. In granting Boeing summary judgment, the District Court found § 1.861–8(e)(3) invalid, reasoning that its categorical treatment of R&D conflicted with congressional intent that there be a direct relationship between items of gross income and expenses related thereto, and with a specific DISC regulation giving the taxpayer the right to group and allocate income and costs by product or product line. The Ninth Circuit reversed.

Held: Section 1.861–8(e)(3) is a proper exercise of the Secretary of the Treasury's rulemaking authority. Pp. 446–457.

(a) The relevant statutory text does not support Boeing's argument that the statute and certain regulations give it an unqualified right to allocate its Company Sponsored R&D expenses to the specific products to which they are factually related and to exclude such R&D from treatment as a cost of any other product. The method that Boeing chose to determine an export sale's transfer price allowed the DISC "to derive taxable income attributable to [an export sale] in an amount which *does not exceed* . . . 50 percent of the *combined taxable income* of [the DISC and the parent] which is *attributable* to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts . . . ." 26 U. S. C. § 994(a)(2) (emphasis added). The statute does not define "combined taxable income" or specifically mention R&D expenditures. The Secretary's regulation must be treated with deference, see *Cottage Savings Assn.* v. *Commissioner*, 499 U. S. 554, 560–561, but the statute places some limits on the Secretary's interpretive authority. First, "does not exceed" places an upper limit on the share of the export profits that can be assigned to a DISC and gives three methods of setting the transfer price. Second, "combined taxable income" makes it clear that the domestic parent's taxable income is a part of the CTI equation. Third, "attributable" limits the portion of the domestic parent's taxable income that can be treated as a part of the CTI. The Secretary's classification of all R&D as an indirect cost of all export

sales of products in a broadly defined SIC category is not arbitrary. It provides consistent treatment for cost items used in computing the taxpayer's domestic taxable income and CTI; and its allocation of R&D expenditures to all products in a category even when specifically intended to improve only one or a few of those products is no more tenuous than the allocation of a chief executive officer's salary to every product that a company sells even when he devotes virtually all of his time to the development of the Edsel. Reading § 994 in light of § 861, the more general provision dealing with the distinction between domestic and foreign source income, does not support Boeing's contrary view. If the Secretary reasonably determines that Company Sponsored R&D can be properly apportioned on a categorical basis, the portion of § 861(b) that deducts from gross income "a ratable part of any expenses . . . which cannot definitely be allocated to some item or class of gross income" is inapplicable. Pp. 446–451.

(b) Boeing's arguments based on specific DISC regulations are also unavailing. Language in 26 CFR § 1.994–1(c)(6)(iii), part of the rule describing CTI computation, does not prohibit a ratable allocation of R&D expenditures that can be "definitely related" to particular export sales. Whether such an expense can be "definitely related" is determined by the rules set forth in the very rule that Boeing challenges, § 1.861–8. Moreover, the Secretary could reasonably determine that expenditures on model 767 research conducted in years before any 767's were sold were not "definitely related" to any sales, but should be treated as an indirect cost of producing the gross income derived from the sale of all planes in the transportation equipment category. Nor do §§ 1.994–1(c)(7)(i) and (ii)(a), which control grouping of transactions for determining the transfer price of sales of export property, and § 1.994–1(c)(6)(iv), which governs the grouping of receipts when the CTI method is used, speak to the questions whether or how research costs should be allocated and apportioned. Pp. 451–455.

(c) What little relevant legislative history there is in this suit weighs in the Government's favor. Pp. 455–457.

258 F. 3d 958, affirmed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post,* p. 457.

Kenneth S. Geller argued the cause for petitioners in No. 01–1209 and respondents in No. 01–1382. With him on

the briefs were *Charles Rothfeld*, *David M. Gossett*, *Alan I. Horowitz*, *Joel V. Williamson*, *Wayne S. Kaplan*, *Roger J. Jones*, *Patricia Anne Yurchak*, *Marjorie M. Margolies*, and *John B. Magee.*

Kent L. Jones argued the cause for the United States in both cases. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General O'Connor*, *Deputy Solicitor General Wallace*, *David English Carmack*, and *Frank P. Cihlar.*†

JUSTICE STEVENS delivered the opinion of the Court.

This suit concerns tax provisions enacted by Congress in 1971 to provide incentives for domestic manufacturers to increase their exports and in 1984 to limit and modify those incentives. The specific question presented involves the interpretation of a Treasury Regulation (26 CFR § 1.861–8(e)(3) (1979)) promulgated in 1977 that governs the accounting for research and development (R&D) expenses under both statutory schemes.[1] We shall explain the general outlines of the two statutes before we focus on that regulation.

The 1971 statute provided special tax treatment for export sales made by an American manufacturer through a subsidiary that qualified as a "domestic international sales corporation" (DISC).[2] The DISC itself is not a taxpayer; a portion of its income is deemed to have been distributed to its shareholders, and the shareholders must pay taxes on that portion,

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†Briefs of *amici curiae* urging reversal were filed for Caterpillar, Inc., et al. by *C. David Swenson;* for the National Foreign Trade Council, Inc., by *Stephen D. Gardner;* and for the Tax Executives Institute, Inc., by *Fred F. Murray* and *Mary L. Fahey.*

[1] In 1996, the provisions of 26 CFR § 1.861–8 were amended, renumbered, and republished as 26 CFR § 1.861–17. See 26 CFR § 1.861–17 (2002); see also 60 Fed. Reg. 66503 (1995).

[2] To qualify as a DISC, at least 95 percent of a corporation's gross receipts must arise from qualified export receipts. See 26 U. S. C. § 992(a)(1)(A). In addition, at least 95 percent of the corporation's assets must be export related. See § 992(a)(1)(B).

but no tax is payable on the DISC's retained income until it is actually distributed. See 26 U. S. C. §§ 991–997. Typically, "a DISC is a wholly owned subsidiary of a U. S. corporation." 1 Senate Finance Committee, Deficit Reduction Act of 1984, 98th Cong., p. 630, n. 1 (Comm. Print 1984) (hereinafter Committee Print). The statute thus provides an incentive to maximize the DISC's share—and to minimize the parent's share—of the parties' aggregate income from export sales.

The DISC statute does not, however, allow the parent simply to assign all of the profits on its export sales to the DISC. Rather, "to avoid granting undue tax advantages,"[3] the statute provides three alternative ways in which the parties may divert a limited portion of taxable income from the parent to the DISC. See 26 U. S. C. §§ 994(a)(1)–(3). Each of the alternatives assumes that the parent has sold the product to the DISC at a hypothetical "transfer price" that produced a profit for both seller and buyer when the product was resold to the foreign customer. The alternative used by Boeing in this suit limited the DISC's taxable income to a little over half of the parties' "combined taxable income" (CTI).[4]

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[3] S. Rep. No. 92–437, p. 13 (1971) (hereinafter S. Rep.).

[4] To be more precise, it allowed the DISC "to derive taxable income attributable to [an export sale] in an amount which does not exceed . . . 50 percent of the combined taxable income of [the DISC and the parent] plus 10 percent of the export promotion expenses of such DISC attributable to such receipts . . . ." 26 U. S. C. § 994(a)(2).

A hypothetical example in both the House and Senate Committee Reports illustrated the computation of a transfer price of $816 based on a DISC's selling price of $1,000 and the parent's cost of goods sold of $650. The gross margin of $350 was reduced by $180 (including the DISC's promotion expenses of $90, the parent's directly related selling and administrative expenses of $60, and the parent's prorated indirect expenses of $30), to produce a CTI of $170. Half of that amount ($85) plus 10 percent of the DISC's promotion expenses ($9) gave the DISC its allowable taxable income of $94, leaving only $76 of income immediately taxable to the parent. The $184 aggregate of the two amounts attributed to the DISC (promotion expenses of $90 plus its $94 share of CTI) subtracted from the

Soon after its enactment, the DISC statute became "the subject of an ongoing dispute between the United States and certain other signatories of the General Agreement on Tariffs and Trade (GATT)" regarding whether the DISC provisions were impermissible subsidies that violated our treaty obligations. Committee Print 634. "To remove the DISC as a contentious issue and to avoid further disputes over retaliation, the United States made a commitment to the GATT Council on October 1, 1982, to propose legislation that would address the concerns of other GATT members." *Id.*, at 634–635. This ultimately resulted in the replacement of the DISC provisions in 1984 with the "foreign sales corporation" (FSC) provisions of the Code. See Deficit Reduction Act of 1984, Pub. L. 98–369, §§ 801–805, 98 Stat. 985.[5]

Unlike a DISC, an FSC is a foreign corporation, and a portion of its income is taxable by the United States. See *ibid.;* see also B. Bittker & J. Eustice, Federal Income Taxation of Corporations and Shareholders ¶ 17.14 (5th ed. 1987). Whereas a portion of a DISC's income was tax deferred, a portion of an FSC's income is exempted from taxation. Compare 26 U. S. C. §§ 991–997 with 26 U. S. C. §§ 921, 923 (1988 ed.). Hence, under the FSC regime, as under the DISC regime, it is in the parent's interest to maximize the FSC's share of the taxable income generated by export sales. Because the differences between the DISC and FSC regimes for the most part are immaterial to this suit, the analysis in this opinion will focus mainly on the DISC provisions.[6]

The Internal Revenue Code gives the taxpayer an election either to capitalize and amortize the costs of R&D over a period of years or to deduct such expenses currently. See

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$1,000 gross receipt produced the "transfer price" of $816. See S. Rep., at 108, n. 7; H. R. Rep. No. 92–533, p. 74, n. 7 (1971) (hereinafter H. R. Rep.).

[5] In 2000, Congress repealed and replaced the FSC provisions with the "extraterritorial income" exclusion of 26 U. S. C. § 114.

[6] Two aspects of the 1984 statute that do have special significance to this suit are discussed in Part IV, *infra.*

26 U. S. C. § 174. The regulation at issue here, 26 CFR § 1.861–8(e)(3) (1979), deals with R&D expenditures for which the taxpayer has taken a current deduction. It tells the taxpaying parent and its DISC "what" must be treated as a cost when calculating CTI, and "how" those costs should be (a) allocated among different products and (b) apportioned between the DISC and its parent.[7]

With respect to the "what" question, the Treasury might have adopted a broad approach defining the relevant R&D as including all of the parent's products, or a narrow approach defining the relevant R&D as all R&D directly related to a particular product being exported. Instead, the regulation includes a list of two-digit Standard Industrial Classification (SIC) categories (examples are "chemicals and allied products" and "transportation equipment"), and it requires that R&D for any product within the same category as the exported product be taken into account.[8] See *ibid.* The regulation explains that R&D on any product "is an inherently speculative activity" that sometimes contributes unexpected benefits on other products, and "that the gross income derived from successful research and development must bear the cost of unsuccessful research and development." *Ibid.*

With respect to the two "how" questions, the regulations use gross receipts from sales as the basis both for allocating the costs among the products within the broad R&D categories and also for apportioning those costs between the parent and the DISC. Thus, if the exported product constitutes 20 percent of the parties' total sales of all products within an

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[7] Treasury Regulation § 1.861–8 (1979) also specifies how other specific items of expense should be treated. See, *e. g.*, 26 CFR § 1.861–8(e)(2) (1979) (interest fees); § 1.861–8(e)(5) (legal and accounting fees); § 1.861–8(e)(6) (income taxes).

[8] The original regulation used two-digit SIC categories. See § 1.861–8(e)(3). The current regulation uses narrower three-digit SIC categories, see 26 CFR § 1.861–17(a)(2)(ii) (2002), but the change is not relevant to this suit.

R&D category, 20 percent of the R&D cost is allocated to that product. And if export sales represent 70 percent of the total sales of that product, 70 percent of that amount, or 14 percent of the R&D, is apportioned to the DISC.

I

Petitioners (and cross-respondents) are The Boeing Company and subsidiaries that include a DISC and an FSC. For over 40 years Boeing has been a world leader in commercial aircraft development and a major exporter of commercial aircraft. During the period at issue in this litigation, the dollar volume of its sales amounted to about $64 billion, 67 percent of which were DISC-eligible export sales. The amount that Boeing spent on R&D during that period amounted to approximately $4.6 billion.

During the tax years at issue here, Boeing organized its internal operations along product lines (*e. g.*, aircraft models 727, 737, 747, 757, 767) for management and accounting purposes, each of which constituted a separate "program" within the Boeing organization. For those purposes, it divided its R&D expenses into two broad categories: "Blue Sky" and "Company Sponsored Product Development." The former includes the cost of broad-based research aimed at generally advancing the state of aviation technology and developing alternative designs of new commercial planes. The latter includes product-specific research pertaining to a specific program after the board of directors has given its approval for the production of a new model. With respect to its $1 billion of "Blue Sky" R&D, Boeing's accounting was essentially consistent with 26 CFR § 1.861–8(e)(3) (1979).[9] Its

[9] Because all of Boeing's commercial aircraft were "transportation equipment" within the meaning of the Treasury Regulation, it properly allocated all of its Blue Sky research among all of its programs, and then apportioned those costs between the parent and the DISC. However, according to the Government, it erroneously did so on the basis of hours of direct labor rather than sales. See Brief for United States 10.

method of accounting for $3.6 billion of "Company Sponsored" R&D gave rise to this litigation.

Boeing's accountants treated all of the Company Sponsored research costs as directly related to a single program, and as totally unrelated to any other program. Thus, for DISC purposes, the cost of Company Sponsored R&D directly related to the 767 model, for example, had no effect on the calculation of the "combined taxable income" produced by export sales of any other models. Moreover, because immense Company Sponsored research costs were routinely incurred while a particular model was being completed and before any sales of that model occurred, those costs effectively "disappeared" in the calculation of the CTI even for the model to which the R&D was most directly related.[10] Almost half of the $3.6 billion of Company Sponsored R&D at issue in this suit was allocated to programs that had no sales in the year in which the research was conducted. That amount (approximately $1.75 billion) was deducted by Boeing currently in the calculation of its taxable income for the years at issue, but never affected the calculation of the CTI derived by Boeing and its DISC from export sales.

Pursuant to an audit, the Internal Revenue Service reallocated Boeing's Company Sponsored R&D costs for the years 1979 to 1987, thereby decreasing the untaxed profits of its export subsidiaries and increasing the parent's taxable profits from export sales. Boeing paid the additional tax obligation of $419 million and filed this suit seeking a refund. Relying on the decision of the Eighth Circuit in *St. Jude Medical, Inc.* v. *Commissioner,* 34 F. 3d 1394 (1994), the District Court entered summary judgment in favor of Boeing. It held that 26 CFR § 1.861–8(e)(3) (1979) is invalid as applied to DISC and FSC transactions because the regulation's cate-

[10] When Boeing charged R&D costs to programs that had no sales in the year the research was conducted, the R&D costs effectively "disappeared" in the sense that they were not accounted for by Boeing in computing its CTI.

gorical treatment of R&D conflicted with congressional intent that there be a "direct" relationship between items of gross income and expenses "related thereto," and with a specific DISC regulation giving the taxpayer the right to group and allocate income and costs by product or product line. The Court of Appeals for the Ninth Circuit reversed, 258 F. 3d 958 (2001), and we granted certiorari to resolve the conflict between the Circuits, 535 U. S. 1094 (2002). We now affirm.

II

Section 861 of the Internal Revenue Code distinguishes between United States and foreign source income for several different purposes. See 26 U. S. C. § 861. The regulation at issue in this suit, 26 CFR § 1.861–8(e)(3) (1979), was promulgated pursuant to that general statute. Separate regulations promulgated under the DISC statute, 26 U. S. C. §§ 991–997, incorporate 26 CFR § 1.861–8(e)(3) (1979) by specific reference. See § 1.994–1(c)(6)(iii) (citing and incorporating the cost allocation rules of § 1.861–8). Boeing does not claim that its method of accounting for Company Sponsored R&D complied with § 1.861–8(e)(3). Rather, it argues that § 1.861–8(e)(3) is so plainly inconsistent with congressional intent and with other provisions of the DISC regulations that it cannot be validly applied to its computation of CTI for DISC purposes.

Boeing argues, in essence, that the statute and certain specific regulations promulgated pursuant to 26 U. S. C. § 994 give it an unqualified right to allocate its Company Sponsored R&D expenses to the specific products to which they are "factually related" and to exclude any allocated R&D from being treated as a cost of any other product. The relevant statutory text does not support its argument.

As we have already mentioned, the DISC statute gives the taxpayer a choice of three methods of determining the transfer price for an exported good. Boeing elected to use only the second method described in the following text:

"Inter-company pricing rules

"(a) In general

"In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount *which does not exceed the greatest of*—

"(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

"(2) 50 percent of the *combined taxable income* of such DISC and such person which is *attributable* to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

"(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

"(b) Rules for commissions, rentals, and marginal costing

"The Secretary shall prescribe regulations setting forth

. . . . .

"(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property." 26 U. S. C. §§ 994(a)(1)–(3), (b)(2) (emphasis added).

The statute does not define the term "combined taxable income," nor does it specifically mention expenditures for R&D. Congress did grant the Secretary express authority to prescribe regulations for determining the proper alloca-

tion of expenditures in computing CTI in certain specific contexts. See, *e. g.*, §§ 994(b)(1)–(2). Yet in promulgating 26 CFR § 1.861–8 (1979), the Secretary of the Treasury exercised his rulemaking authority under 26 U. S. C. § 7805(a), which gives the Secretary general authority to "prescribe all needful rules and regulations for the enforcement" of the Internal Revenue Code. See 41 Fed. Reg. 49160 (1976) ("The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code"). Even if we regard the challenged regulation as interpretive because it was promulgated under § 7805(a)'s general rulemaking grant rather than pursuant to a specific grant of authority, we must still treat the regulation with deference. See *Cottage Savings Assn.* v. *Commissioner*, 499 U. S. 554, 560–561 (1991).

The words that we have emphasized in the statutory text do place some limits on the Secretary's interpretive authority. First, the "does not exceed" phrase places an upper limit on the share of the export profits that can be assigned to a DISC and also gives the taxpayer an unfettered right to select any of the three methods of setting a "transfer price." Second, the use of the term "combined taxable income" in subsection (a)(2) makes it clear that the taxable income of the domestic parent is a part of the equation that should produce the CTI. As Boeing recognizes, even a charitable contribution to the Seattle Symphony that reduces its domestic earnings from sales of 767's must be treated as a cost that is not definitely related to any particular category of income and thus must be apportioned among all categories of income, including income from export sales. See Brief for Petitioners in No. 01–1209, p. 8, n. 7. Third, the word "attributable" places a limit on the portion of the domestic parent's taxable income that can be treated as a part of the CTI. It is this word that provides the statutory basis for Boeing's position.

Under Boeing's reading of the statute, a calculation of the domestic income "attributable" to the export sale of a 767 may include both the direct and indirect costs of manufacturing and selling 767's, but it may not include the direct costs of selling anything else. Moreover, if Boeing's accountants classify a particular cost as directly related to the 767, that classification is conclusive. Thus, while the Secretary asserts that Boeing's R&D expenses are definitely related to all income in the relevant SIC category, Boeing claims the right to divide its R&D in a way that effectively creates three segments: (1) Blue Sky; (2) Company Sponsored R&D on products that have no sales in the current year; and (3) Company Sponsored R&D on products that are being sold currently. Boeing, like the Secretary, essentially treats Blue Sky R&D as an indirect cost in computing both its domestic taxable income and its CTI. With respect to the second segment, Boeing uses the R&D to reduce its domestic taxable earnings on every product it sells, but eliminates it entirely from the calculation of CTI on any product by charging the R&D costs to programs without any sales. The third segment is used for both domestic and CTI purposes, but with respect to CTI only for the export sales to which it is "factually related."

The Secretary's classification of all R&D as an indirect cost of all export sales of products in a broadly defined SIC category—in other words, as "attributable" to such sales—is surely not arbitrary. It has the virtue of providing consistent treatment for cost items used in computing the taxpayer's domestic taxable income and its CTI. Moreover, its allocation of R&D expenditures to all products in a category even when specifically intended to improve only one or a few of those products is no more tenuous than the allocation of a chief executive officer's salary to every product that a company sells even when he devotes virtually all of his time to the development of an Edsel.

On the other hand, even if Boeing's method of accounting for R&D is fully justified for management purposes, it certainly produces anomalies for tax purposes. Most obvious is the fact that it enabled Boeing to deduct some $1.75 billion of expenditures from its domestic taxable earnings under 26 U. S. C. § 174 and never deduct a penny of those expenditures from its "combined taxable earnings" under the DISC statute. See Brief for Petitioners in No. 01–1209, at 11. Less obvious, but nevertheless significant, is that Boeing's method assumed that Blue Sky research produces benefits for airplane models that are producing current income and—at the same time—assumed that Company Sponsored research related to a specific product, such as the 727, is not likely to produce benefits for other airplane models, such as the 737 or 767.[11]

In all events, the mere use of the word "attributable" in the text of § 994 surely does not qualify the Secretary's authority to decide whether a particular tax deductible expenditure made by the parent of a DISC is sufficiently related to its export sales to qualify as an indirect cost in the computation of the parties' CTI. Boeing argues, however, that the text of § 994 should be read in light of § 861, the more general provision dealing with the distinction between domestic and foreign source income.

Title 26 U. S. C. § 861(b) contains the following two sentences:

> "Taxable income from sources within United States
>
> "From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated

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[11] This assumption, of course, runs contrary to the Secretary's determination that R&D "is an inherently speculative activity" that sometimes contributes unexpected benefits on other products. 26 CFR § 1.861–8(e)(3)(i)(A) (1979).

> thereto *and a ratable part* of any expenses, losses, or other deductions *which cannot definitely be allocated to some item or class of gross income.* The remainder, if any, shall be included in full as taxable income from sources within the United States." (Emphasis added.)

Focusing on the emphasized words, Boeing interprets this section as having created a background rule dividing all expenses into two categories: those that can be allocated to specific income and those that cannot. "Ratable" allocation is permissible for the second category, but not for the first, according to Boeing. Moreover, in Boeing's view, any expense in the first category cannot be ratably apportioned across all classes of income.

There are at least two flaws in this argument. First, although the emphasized words authorize ratable apportionment of costs that cannot definitely be allocated to some item or class of income, the sentence as a whole does not prohibit ratable apportionment of expenses that could be, but perhaps in fairness should not be, treated as direct costs. Second, the Secretary has the authority to prescribe regulations determining whether an expense can be properly apportioned to an item of gross income in the calculation of CTI. See 26 U. S. C. § 7805(a). Thus, as in this suit, if the Secretary reasonably determines that Company Sponsored R&D can be properly apportioned on a categorical basis, the italicized portion of § 861 is simply inapplicable.

In sum, Boeing's arguments based on statutory text are plainly insufficient to overcome the deference to which the Secretary's interpretation is entitled.

III

Boeing also advances two arguments based on the text of specific DISC regulations. The first resembles its argument based on the text of § 861, and the second relies on regulations providing that certain accounting decisions made by the taxpayer shall be controlling.

The regulations included in 26 CFR § 1.994–1 (1979) set forth intercompany pricing rules for DISCs. They generally describe the three methods of determining a transfer price, noting that the taxpayer may choose the most favorable method, and may group transactions to use one method for some export sales and another method for others. See *ibid.* With respect to the CTI method used by Boeing, there is a rule, § 1.994–1(c)(6), that describes the computation of CTI. The rule broadly defines the CTI of a DISC and its related supplier from a sale of export property as the excess of gross receipts over their total costs "which relate to such gross receipts."[12] Subdivision (iii) of that rule, on which Boeing relies, provides:

> "Costs (other than cost of goods sold) which shall be treated as relating to gross receipts from sales of export property are *(a)* the expenses, losses, and other deductions *definitely related*, and therefore allocated and ap-

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[12] Treasury Regulation § 1.994–1(c)(6), 26 CFR § 1.994–1(c)(6) (1979), provides in part:

"*Combined taxable income.* For purposes of this section, the combined taxable income of a DISC and its related supplier from a sale of export property is the excess of the gross receipts (as defined in section 993(f)) of the DISC from such sale over the total costs of the DISC and related supplier which relate to such gross receipts. Gross receipts from a sale do not include interest with respect to the sale. Combined taxable income under this paragraph shall be determined after taking into account under paragraph (e)(2) of this section all adjustments required by section 482 with respect to transactions to which such section is applicable. In determining the gross receipts of the DISC and the total costs of the DISC and related supplier which relate to such gross receipts, the following rules shall be applied:

"(i) Subject to subdivisions (ii) through (v) of this subparagraph, the taxpayer's method of accounting used in computing taxable income will be accepted for purposes of determining amounts and the taxable year for which items of income and expense (including depreciation) are taken into account. See § 1.991–1(b)(2) with respect to the method of accounting which may be used by a DISC."

> portioned, thereto, and *(b)* a ratable part of any other expenses, losses, or other deductions *which are not definitely related to a class of gross income*, determined in a manner consistent with the rules set forth in § 1.861–8." § 1.994–1(c)(6)(iii) (emphasis added).

Boeing interprets the emphasized words as prohibiting a ratable allocation of R&D expenditures that can be "definitely related" to particular export sales. The obvious response to this argument is provided by the final words in the paragraph. Whether such an expense can be "definitely related" is determined by the rules set forth in the very regulation that Boeing challenges, § 1.861–8. Moreover, it seems quite clear that the Secretary could reasonably determine that expenditures on 767 research conducted in years before any 767's were sold were not "definitely related" to any sales, but should be treated as an indirect cost of producing the gross income derived from the sale of all planes in the transportation equipment category.

Boeing also argues that the regulations expressly allow it to allocate and apportion R&D expenses to groups of export sales that are based on industry usage rather than SIC categories. The regulations providing the strongest support for this argument are §§ 1.994–1(c)(7)(i) and (ii)(a), which control the grouping of transactions for the purpose of determining the transfer price of sales of export property, and § 1.994–1(c)(6)(iv), which governs the grouping of receipts when the CTI method of transfer pricing is used.[13] Treasury Regulation § 1.994–1(c)(7) reads, in part, as follows:

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[13] In support of its argument that §§ 1.994–1(c) and 1.861–8(e)(3) conflict, Boeing also points to various proposed regulations, including example 1 of proposed regulation § 1.861–8(g). See Brief for Petitioners in No. 01–1209, pp. 22–26. Unlike Boeing and the dissent, see *post*, at 458–459 (opinion of THOMAS, J.), we find these proposed regulations to be of little consequence given that they were nothing more than mere proposals. In 1972—when regulations governing DISCs were first proposed—the Secre-

> "*Grouping transactions.* (i) Generally, the determinations under this section are to be made on a transaction-by-transaction basis. However, at the annual choice of the taxpayer some or all of these determinations may be made on the basis of groups consisting of products or product lines.
>
> "(ii) A determination by a taxpayer as to a product or a product line will be accepted by a district director if such determination conforms to any one of the following standards: *(a)* A recognized industry or trade usage, or *(b)* the 2-digit major groups . . . of the Standard Industrial Classification . . . ."

As we understand the statutory and regulatory scheme, it gives controlling effect to three important choices by the taxpayer. First, the taxpayer may elect to deduct R&D expenses on an annual basis instead of capitalizing and amortizing those costs. See 26 U. S. C. § 174(a)(1). Second, when engaging in export transactions with a DISC, the taxpayer may choose any one of the three methods of determining the transfer price. See § 994(a). Third, the taxpayer may decide how best to group those transactions for purposes of applying the transfer pricing methods. See 26 CFR § 1.994–1(c)(7) (1979). Conceivably, the taxpayer could account for each sale separately, by product lines, or by grouping all of its export sales together. These regulations confirm the finality of the third type of choice (*i. e.*, which groups of sales will be evaluated under one of the three alternative transfer pricing methods), but do not speak to the questions answered by the regulation at issue in this suit—namely, whether or

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tary made clear that the proposed regulations were suggestions only and that whatever final regulations were ultimately adopted would govern. See Technical Memorandum accompanying Notice of Proposed Rulemaking, 1972 T. M. Lexis 14, pp. *8–*9 (June 29, 1972) (providing that in determining deductible expenses, "the rules of section 861(b) and § 1.861–8 are to be applied in whatever form they ultimately take in a new notice to be prepared").

how a particular research cost should be allocated and apportioned.

Nor does § 1.994–1(c)(6)(iv) support Boeing's argument. It provides that a "taxpayer's choice in accordance with subparagraph (7) of this paragraph as to the grouping of transactions shall be controlling, and costs deductible in a taxable year shall be allocated and apportioned to the items or classes of gross income of such taxable year resulting from such grouping." The regulation makes clear that if the taxpayer selects the CTI method of transfer pricing (as Boeing did), then the taxpayer may choose to group export receipts according to product lines, two-digit SIC codes, or on a transaction-by-transaction basis. *Ibid.* The regulation also establishes that there shall be an allocation and apportionment of all relevant costs deducted in the taxable year. *Ibid.* Notably, however, the regulation simply does not speak to how costs should be allocated among different items or classes of gross income and apportioned between the DISC and its parent once the taxpayer (pursuant to § 1.994–1(c)(6)) groups its gross receipts. Treasury Regulation § 1.861–8(e)(3) fills this gap by providing that R&D expenditures that are related to all income reasonably connected with the taxpayer's relevant two-digit SIC category or categories are "*allocable to all items of gross income as a class* . . . related to such product category (or categories)." 26 CFR § 1.861–8(e)(3) (1979) (emphasis added).

IV

Boeing also relies heavily on legislative history, particularly on statements in Reports prepared by the tax-writing committees of the House and the Senate on the DISC statute. Those Reports are virtually identical in terms of their discussion of the DISC provisions. See H. R. Rep., at 58–95; S. Rep., at 90–129. Neither says anything about R&D costs. They both contain statements supporting the proposition that in determining how to calculate income that qualifies

for a tax benefit, the expenses to be deducted from gross income are those expenses that are "directly related" to the income. See H. R. Rep., at 74; S. Rep., at 107. Those statements are not, however, inconsistent with the proposition that particular R&D expenses may be factually related to more than one item of income, or with the proposition that the Secretary has broad authority to promulgate regulations determining which expenses are directly or indirectly related to particular items of income.

If anything, what little relevant legislative history there is in this suit weighs in favor of the Government's position in two important respects. First, whereas the DISC transfer price could be set at a level that attributed over half of the CTI to the DISC, when Congress enacted the FSC provisions in 1984, it lowered the maximum allowable share of CTI attributable to an FSC to 23 percent. Compare 26 U. S. C. § 994(a)(2) with 26 U. S. C. § 925(a)(2) (1988 ed.). This dramatizes the point that even though the purpose of the DISC and FSC statutes was to provide American firms with a tax incentive to increase their exports, Congress did not intend to grant "undue tax advantages" to firms. S. Rep., at 13. Rather, the statutory formulas were designed to place ceilings on the amount of those special tax benefits. See Committee Print 636 ("[T]he income of the foreign sales corporation must be determined according to transfer prices specified in the bill: either actual prices for sales between unrelated, independent parties or, if the sales are between related parties, formula prices which are intended to comply with GATT's requirement of arm's-length prices").

Second, the 1977 R&D regulation at issue in this suit had been in effect for seven years when Congress enacted the FSC provisions. Yet Congress did not legislatively override 26 CFR § 1.861–8(e)(3) (1979) in enacting the FSC provisions. In fact, although a moratorium was placed on the application of § 1.861–8(e)(3) for purposes of the sourcing of income in

1981,[14] a 1984 conference agreement specified that the moratorium would "not apply for other purposes, such as the computation of combined taxable income of a DISC (or FSC) and its related supplier." H. R. Conf. Rep. No. 98–861, p. 1263 (1984). The fact that Congress did not legislatively override 26 CFR § 1.861–8(e)(3) (1979) in enacting the FSC provisions in 1984 serves as persuasive evidence that Congress regarded that regulation as a correct implementation of its intent. See *Lorillard* v. *Pons*, 434 U. S. 575, 580–581 (1978).

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

Before placing its hand in the taxpayer's pocket, the Government must place its finger on the law authorizing its action. *United Dominion Industries, Inc.* v. *United States*, 532 U. S. 822, 839 (2001) (THOMAS, J., concurring) (citing *Leavell* v. *Blades*, 237 Mo. 695, 700–701, 141 S. W. 893, 894 (1911)). Despite the Government's failure to do so here, the Court holds in its favor; I respectfully dissent.

To read the majority opinion, one would think that the Court has before it a perfectly clear statutory and regulatory scheme and that the position of petitioners/cross-respondents (hereinafter Boeing) is utterly without support. Nothing could be further from the facts of this suit. Indeed, the Internal Revenue Service (IRS) itself initially read the statu-

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[14] In 1981, Congress imposed a temporary moratorium on the application of the cost allocation rules of 26 CFR § 1.861–8(e)(3) (1979) solely for the geographic sourcing of income. See Economic Recovery Tax Act of 1981, Pub. L. 97–34, § 223, 95 Stat. 249. As a result, research expenditures made for research conducted in the United States were allocated against United States source gross income only—not between United States source income and foreign source income. See H. R. Conf. Rep. No. 98–861, p. 1262 (1984).

tory and regulatory provisions at issue here to permit precisely what Boeing asserts it is allowed to do.[1]

When regulations governing DISCs were first proposed in 1972, the IRS received public comments recommending that the regulations be amplified to include rules and examples on how expenses should be treated for purposes of determining the combined taxable income of the DISC and a related supplier. The IRS, however, declined to incorporate the recommendations in the final regulations, explaining that proposed regulation § 1.861–8, which had been published in 1973, provided ample guidance on the subject. Technical Memorandum accompanying T. D. 7364, 1974 T. M. Lexis 30, pp. *20–*21 (Oct. 29, 1974).

Proposed regulation § 1.861–8(e)(3), in turn, explained that where "research and development . . . is intended or is reasonably expected to result in the improvement of specific properties or processes, deductions in connection with such research and development shall be considered definitely related and therefore allocable to the class of gross income to which the properties or processes give rise or are reasonably *expected* to give rise." 38 Fed. Reg. 15843 (1973). The regulations went on to note that in "other cases, as in the case of most basic research, research and development shall generally be considered definitely related and therefore allocable to all gross income of the current taxable year which is likely to benefit from the research and development." *Ibid.* Example 1 in § 1.861–8(g) illustrated this principle by considering the research and development (R&D) expenditures of a corporation manufacturing four-, six-, and eight-cylinder gasoline engines. The corporation conducted both general and engine-specific research. The example made clear that,

[1] Because, as the Court notes, *ante*, at 442, differences in the rules governing domestic international sales corporations (DISCs) and foreign sales corporations do not affect the outcome of this suit, I too focus only on the relevant DISC provisions.

while general R&D expenses were "definitely related" to gross income resulting from sales of all three types of engines, R&D expenses in connection with a specific type of engine were to be allocated only to gross income arising from sales of that type of engine. *Id.*, at 15846 ("X's deductions for its research and development expenses in connection with the 4 cylinder engine are definitely related to the gross income to which the 4 cylinder engine gives rise, *i. e.*, gross income from the sales of 4 cylinder engines . . .").

Indeed, the IRS' 1974 position on the proper allocation of R&D expenses incurred in connection with separate lines of products is the only one that makes sense under the relevant DISC regulations. See, *e. g.*, 26 CFR §§ 1.994–1(c)(6), (7) (1979). As the Court explains, *ante*, at 440, 26 U. S. C. § 994 was designed to provide special tax treatment for American companies engaged in export activities. To that end, § 994 permits a DISC and its related supplier to compute their relevant transfer price (and, relatedly, their income tax liability) based on one of three methods. See § 994 (providing that the transfer price for sales between a DISC and a related supplier can be computed based on (1) the gross income method, (2) the combined taxable income method, and (3) the usual transfer-pricing rules set forth in § 482).

The Treasury Department has promulgated regulations explaining how the statutory framework must be applied. Section 1.994–1(c)(7) of those regulations explains that, as a general rule, a determination of the transfer price under § 994 is to be made on a transaction-by-transaction basis. Section 1.994–1(c)(7), however, provides that, instead of following the transaction-by-transaction rule, taxpayers may make § 994 transfer price determinations based on groups consisting of products or product lines. § 1.994–1(c)(7)(i). Specifically, the regulation states:

> "A determination by a taxpayer as to a product or a product line will be accepted by a district director if

> such determination conforms to any one of the following standards: *(a)* A recognized industry or trade usage, or *(b)* the 2-digit major groups (or any inferior classifications or combinations thereof, within a major group) of the Standard Industrial Classification [SIC] as prepared by the [Office of Management and Budget]." § 1.994–1(c)(7)(ii).

Section 1.994–1(c)(6)(iv), in turn, provides that, in connection with the computation of combined taxable income, "[t]he taxpayer's choice in accordance with [§ 1.994–1(c)(7)] as to the grouping of transactions shall be controlling, and *costs deductible in a taxable year shall be allocated and apportioned to the items or classes of gross income of such taxable year resulting from such grouping.*" (Emphasis added.) Thus, in tandem, §§ 1.994–1(c)(6)(iv) and 1.994–1(c)(7) give a taxpayer the choice of allocating and apportioning costs to items or classes of gross income resulting from (1) case-by-case transactions, (2) products or product lines grouped together based on industry or trade usage, and (3) products or product lines grouped together based on 2-digit SIC codes or lesser included subgroups.

Although under § 1.991–1(c)(7) taxpayers are given three choices with respect to the proper grouping of export income (*and* the related allocation of *expenses*), and although § 1.994–1(c)(6)(iv) provides that the taxpayer's selection under § 1.991–1(c)(7) shall be "controlling," § 1.861–8(e)(3) takes away the very choices § 1.991–1 provides. Under § 1.861–8(e)(3), the taxpayer is told that R&D expenses may be allocated *solely* to items or classes of gross income resulting from products that are within the same 2-digit SIC group—which happens to be only one of the three options given under § 1.991–1(c)(7). In my view, the rule set forth in § 1.861–8(e)(3) entirely eviscerates the options given in § 1.991–1. Thus, despite the Court's efforts to show that the two regulations complement, rather than contradict, each

other, *ante*, at 453–455, the conflict is irreconcilable.[2] On these facts, a taxpayer should be permitted to compute its tax liability under § 1.991–1, rather than under § 1.861–8(e)(3), based on the principle that a specific rule governs a general one.[3] See *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384 (1992); *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U. S. 437, 445 (1987); see also *St. Jude Medical, Inc.* v. *Commissioner*, 34 F. 3d 1394 (CA8 1994).

The Court disapproves of Boeing's method of allocating R&D because, as the Court sees it, Boeing's approach results in the "disappear[ance]" of relevant costs, *ante*, at 445, in "the sense that [R&D costs] were not accounted for by Boeing in computing its [combined taxable income]," *ante*, at 445, n. 10. The Court is troubled by the fact that this computation method has enabled Boeing "to deduct some $1.75 billion of expenditures from its domestic taxable earnings under 26 U. S. C. § 174 and never deduct a penny of those expenditures from its 'combined taxable earnings' under the DISC statute." *Ante*, at 450. But the "disappearance" of Boeing's R&D expenses is the direct result of Congress' decision to encourage such expenditures by making them immediately deductible under 26 U. S. C. § 174(a)(1). Moreover, the approach adopted in the regulations, and approved by the Court, does not remedy the alleged problem of disappearing

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[2] A taxpayer wishing to (1) group its sales based on an accepted industry practice, for example, based on different models, *and* (2) allocate its R&D expenses with respect to a specific model to the items or classes of gross income resulting from that model is not, on the Government's view, permitted to do so. Rather, the taxpayer must first allocate R&D expenses incurred in connection with the relevant model to items or classes of gross income resulting from all models falling within the same 2-digit SIC group and only after doing so can the taxpayer deduct a portion of that model's R&D expenses from the income earned by sales of that model.

[3] With respect to a DISC, § 1.991–1 provides the more specific rules because it applies only to DISCs, while § 1.861–8(e)(3) sets forth more general rules because it applies to all taxpayers that have foreign source income.

R&D expenses. A company that decides to enter the export market with a product unrelated to its existing business remains free to deduct in the current tax period all R&D expenses incurred in connection with the new product, even though those expenses would not be used to offset DISC income resulting from the sale of existing products.[4] Finally, neither the Court nor the Government provides a satisfactory explanation for why § 861 can be read to permit the "disappearance" of most expenses, see, *e. g.*, 26 CFR § 1.861–8(d)(1) (1979) ("Each deduction which bears a definite relationship to a class of gross income shall be allocated to that class . . . even though, for the taxable year, no gross income in such class is received or accrued . . . . In apportioning deductions, it may be that, for the taxable year, there is no gross income in the statutory grouping (or residual grouping), or that deductions exceed the amount of gross income in the statutory grouping (or residual grouping)"); see also 1 J. Isenbergh, International Taxation: U. S. Taxation of Foreign Persons and Foreign Income ¶ 21.10 (3d ed. 2003) ("[I]f an expense incurred in one year is properly allocable to income arising in another, the expense will be allocated to the class to which the income belongs and may therefore produce a loss in that class for the year"), but to disallow the "disappearance" of R&D expenses.

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[4] Boeing illustrates this point with the following example: Suppose a company that produces and exports athletic clothing (SIC Code 23) decides to invest the proceeds of its clothing sales in research to develop a line of athletic equipment (SIC Code 39). The company has current DISC sales of $1 million from the athletic clothing, no current sales of athletic equipment, and $500,000 in athletic equipment R&D expenses. Under the regulations, the $500,000 of equipment-related R&D will be allocated to the athletic equipment SIC Code, which has no income. It will not be allocated to the athletic clothing SIC Code to reduce the income eligible for the DISC benefit related to the clothing. Thus, in the words of the Court, the expense will simply "disappear." Brief for Petitioners in No. 01–1209, p. 37, n. 17.

Because I believe that § 1.861–8(e)(3) does not apply to a DISC, I need not decide here whether § 1.861–8(e)(3) is consistent with the text of § 861(b) and may be properly applied in other contexts. I am puzzled, however, by the Court's assertion that the Secretary is free to determine that certain expenses "can be properly apportioned on a categorical basis," *ante,* at 451, and the implication that the Secretary has authority to require "ratable apportionment of expenses that could be, but perhaps in fairness should not be, treated as direct costs." *Ibid.* By its terms, § 861(b) appears to contemplate two types of expenses: (1) those that can definitely be allocated to some item or class of gross income and (2) those that *cannot.* 26 U. S. C. § 861(b) (providing for the deduction of "*the* expenses, losses, and other deductions properly apportioned or allocated thereto *and a ratable part* of any expenses, losses, or other deductions *which cannot definitely be allocated to some item or class of gross income*" (emphasis added)). Moreover, on its face, the statute does not appear to permit expenses to be "deemed" related to an item or class of gross income, even though in actual fact they are not so related. Yet, § 1.861–8(e)(3) relies on the notion of "deemed relationships." The regulation states that the methods of allocation and apportionment established there "recognize that research and development is an inherently speculative activity, that findings may contribute unexpected benefits, and that the gross income derived from successful research and development must bear the cost of unsuccessful research and development." 26 CFR § 1.861–8(e)(3)(i)(A) (1979). The regulation then proceeds to require the allocation of R&D expenses based on 2-digit SIC groups. But neither the regulation nor the Court attempt to reconcile the statutory text with the regulation's determination to allocate certain R&D expenses to items or classes of gross income that admittedly did not benefit from that research.

* * *

In short, I conclude that Boeing properly computed its tax liability for the years at issue here. I would therefore reverse the judgment of the Court of Appeals. Because the Court concludes otherwise, I respectfully dissent.

Syllabus

UNITED STATES *v.* WHITE MOUNTAIN APACHE TRIBE

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

No. 01–1067. Argued December 2, 2002—Decided March 4, 2003

Under Pub. L. 86–392, 74 Stat. 8 (1960 Act), the "former Fort Apache Military Reservation" is "held by the United States in trust for the White Mountain Apache Tribe, subject to the right of the Secretary of the Interior to use any part of the land and improvements." The Secretary has exercised that right with respect to about 30 of the post's buildings and appurtenances. The Tribe sued the United States for the amount necessary to rehabilitate the property occupied by the Government in accordance with standards for historic preservation, alleging that the United States had breached a fiduciary duty to maintain, protect, repair, and preserve the trust property. In its motion to dismiss, the Government acknowledged that, under the Indian Tucker Act, it was subject to the jurisdiction of the Court of Federal Claims with respect to certain Indian tribal claims, but stressed that the waiver operated only when underlying substantive law could fairly be interpreted as giving rise to a particular duty, breach of which should be compensable in money damages. The Government contended that jurisdiction was lacking here because no statute or regulation could fairly be read to impose a legal obligation on it to maintain or restore the trust property, let alone authorize compensation for breach. The Court of Federal Claims agreed and dismissed the complaint, relying primarily on *United States* v. *Mitchell*, 445 U. S. 535 *(Mitchell I)*, and *United States* v. *Mitchell*, 463 U. S. 206 *(Mitchell II)*. The court ruled that, like the Indian General Allotment Act at issue in *Mitchell I*, the 1960 Act created nothing more than a "bare trust," with no predicate for finding a fiduciary obligation enforceable by monetary relief. The Federal Circuit reversed and remanded, on the understanding that the Government's property use under the 1960 Act triggered a common-law trustee's duty to act reasonably to preserve any property the Secretary chose to utilize, an obligation fairly interpreted as supporting a money damages claim. The court held that the 1960 Act's provision for the Government's exclusive control over the buildings actually occupied raised the trust to the level of *Mitchell II*, *supra*, at 225, in which this Court held that federal timber management statutes and regulations, under which

the United States assumed "elaborate control" over tribal forests, identified a specific trust relationship enforceable by a damages award.

Held: The 1960 Act gives rise to Indian Tucker Act jurisdiction in the Court of Federal Claims over the Tribe's suit for money damages against the United States. Pp. 472–479.

(a) The Indian Tucker Act gives that court jurisdiction over Indian tribal claims that "otherwise would be cognizable . . . if the claimant were not an Indian tribe," 28 U. S. C. § 1505, but creates no substantive right enforceable against the Government by a claim for money damages, *e. g., Mitchell II*, 463 U. S., at 216. A statute creates a right capable of grounding such a claim only if it "can fairly be interpreted as mandating compensation by the . . . Government for the damages sustained." *E. g., id.*, at 217. This "fair interpretation" rule demands a showing demonstrably lower than the standard for the initial waiver of sovereign immunity that is necessary to authorize a suit against the Government. It is enough that a statute creating a Tucker Act right be reasonably amenable to the reading that it mandates a right of recovery in damages. See *id.*, at 218–219. While the premise to a Tucker Act claim will not be "lightly inferred," *id.*, at 218, a fair inference will do. Pp. 472–473.

(b) The two *Mitchell* cases give a sense of when it is fair to infer a fiduciary duty qualifying under the Indian Tucker Act and when it is not. In *Mitchell I*, because the Allotment Act gave the Government no functional obligations to manage timber, 445 U. S., at 542–543, and to the contrary established that the Indian allottee, and not a representative of the United States, is responsible for using the land, *ibid.*, the Court found that Congress did not intend to impose a duty on the Government to manage resources, *id.*, at 542. In *Mitchell II*, however, because the statutes and regulations there considered gave the United States full responsibility to manage Indian resources and land for the Indians' benefit, the Court held that they defined the contours of the United States' fiduciary responsibilities beyond the "bare" or minimal level, and thus could fairly be interpreted as mandating compensation through money damages if the Government faltered in its responsibility. 463 U. S., at 224–226. Pp. 473–474.

(c) The 1960 Act goes beyond a bare trust and permits a fair inference that the Government is subject to duties as a trustee and potentially liable in damages for breach. The statute expressly defines a fiduciary relationship in the provision that Fort Apache be held by the Government in trust for the Tribe, then proceeds to invest the United States with discretionary authority to make direct use of portions of the trust corpus. It is undisputed that the Government has to this day availed

itself of its option. As to the property subject to the Government's actual use, then, the United States has not merely exercised daily supervision but has enjoyed daily occupation, and so has obtained control at least as plenary as its authority over the timber in *Mitchell II*. Although the 1960 Act, unlike the statutes cited in that case, does not expressly subject the Government to management and conservation duties, the fact that the property occupied by the United States is expressly subject to a trust supports a fair inference that an obligation to preserve the property improvements was incumbent on the Government as trustee. See, *e. g.*, *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559, 572. Thus, the Government should be liable in damages for breach. *Mitchell II*, *supra*, at 226. Pp. 474–476.

(d) The Court rejects the Government's three defenses. First, the argument that the 1960 Act specifically carved out of the trust the Government's right to use the property it occupied is at odds with a natural reading of the 1960 Act, which provided that "Fort Apache" was subject to the trust, not that the trust consisted of only the property not used by the Secretary. Second, the argument that there is nothing in the 1960 Act from which an intent to provide a damages remedy is fairly inferable rests on a failure to appreciate either the role of trust law in drawing a fair inference or the scope of *United States* v. *Testan*, 424 U. S. 392, and *Army and Air Force Exchange Service* v. *Sheehan*, 456 U. S. 728, on which the Government relies. The Government's assertion that an explicit provision for money damages is necessary to support every Tucker Act claim would leave *Mitchell II* wrongly decided, for there is no federal statute explicitly providing that inadequate timber management would be compensated through a suit for damages. More fundamentally, the Government's position, if carried to its conclusion, would read the trust relation out of Indian Tucker Act analysis; if a specific provision for damages is needed, a trust obligation and trust law are not. *Sheehan* and *Testan* are not to the contrary; they were cases without any trust relationship in the mix of relevant fact, but with affirmative reasons to believe that no damages remedy could have been intended, absent a specific provision. Third, the Government is clearly wrong when it argues that prospective injunctive relief tailored to the situation, rather than the inference of a damages remedy, is the only appropriate remedy for maintenance failures. If the Government is suggesting that the recompense for run-down buildings should be an affirmative order to repair them, it is merely proposing the economic (but perhaps cumbersome) equivalent of damages. But if it is suggesting that relief must be limited to an injunction to toe the fiduciary mark in the future, it would bar the courts from making the Tribe whole for

deterioration already suffered, and shield the Government against the remedy whose very availability would deter it from wasting trust property in the period before a Tribe has gone to court for injunctive relief. *E. g., Mitchell II, supra,* at 227. Pp. 476–479.

249 F. 3d 1364, affirmed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. GINSBURG, J., filed a concurring opinion, in which BREYER, J., joined, *post,* p. 479. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and KENNEDY, JJ., joined, *post,* p. 481.

Gregory G. Garre argued the cause for the United States. With him on the briefs were *Solicitor General Olson, Assistant Attorney General Sansonetti, Deputy Solicitor General Kneedler, Elizabeth Ann Peterson,* and *James M. Upton.*

Robert C. Brauchli argued the cause and filed a brief for respondent.*

JUSTICE SOUTER delivered the opinion of the Court.

The question in this case arises under the Indian Tucker Act: does the Court of Federal Claims have jurisdiction over the White Mountain Apache Tribe's suit against the United States for breach of fiduciary duty to manage land and improvements held in trust for the Tribe but occupied by the Government. We hold that it does.

I

The former military post of Fort Apache dates back to 1870 when the United States established the fort within territory that became the Tribe's reservation in 1877. In 1922, Congress transferred control of the fort to the Secretary of the Interior (Secretary) and, in 1923, set aside about 400 acres, out of some 7,000, for use as the Theodore Roosevelt Indian School. Act of Jan. 24, 1923, ch. 42, 42 Stat. 1187.

**John E. Echohawk* and *Tracy A. Labin* filed a brief for the National Congress of American Indians as *amicus curiae* urging affirmance.

Congress attended to the fort again in 1960, when it provided by statute that "former Fort Apache Military Reservation" would be "held by the United States in trust for the White Mountain Apache Tribe, subject to the right of the Secretary of the Interior to use any part of the land and improvements for administrative or school purposes for as long as they are needed for the purpose." Pub. L. 86–392, 74 Stat. 8 (1960 Act). The Secretary exercised that right, and although the record does not catalog the uses made by the Department of the Interior, they extended to about 30 of the post's buildings and appurtenances, a few of which had been built when the Government first occupied the land. Although the National Park Service listed the fort as a national historical site in 1976, the recognition was no augury of fortune, for just over 20 years later the World Monuments Watch placed the fort on its 1998 List of 100 Most Endangered Monuments. Brief for Respondent 3.

In 1993, the Tribe commissioned an engineering assessment of the property, resulting in a finding that as of 1998 it would cost about $14 million to rehabilitate the property occupied by the Government in accordance with standards for historic preservation. This is the amount the Tribe sought in 1999, when it sued the United States in the Court of Federal Claims, citing the terms of the 1960 Act, among others,[1] and alleging breach of fiduciary duty to "maintain, protect, repair and preserve" the trust property. App. to Pet. for Cert. 37a.

The United States moved to dismiss for failure to state a claim upon which relief might be granted and for lack of subject-matter jurisdiction. While the Government acknowledged that the Indian Tucker Act, 28 U. S. C. § 1505, invested the Court of Federal Claims with jurisdiction to

[1] These included the Snyder Act, 42 Stat. 208, as amended, 25 U. S. C. § 13, and the National Historic Preservation Act, 80 Stat. 915, 16 U. S. C. § 470 *et seq.*

render judgments in certain claims by Indian tribes against the United States, including claims based on an Act of Congress, it stressed that the waiver operated only when underlying substantive law could fairly be interpreted as giving rise to a particular duty, breach of which should be compensable in money damages. The Government contended that jurisdiction was lacking here because no statute or regulation cited by the Tribe could fairly be read as imposing a legal obligation on the Government to maintain or restore the trust property, let alone authorizing compensation for breach.[2]

The Court of Federal Claims agreed with the United States and dismissed the complaint for lack of jurisdiction, relying primarily on the two seminal cases of tribal trust claims for damages, *United States* v. *Mitchell*, 445 U. S. 535 (1980) *(Mitchell I)*, and *United States* v. *Mitchell*, 463 U. S. 206 (1983) *(Mitchell II)*. *Mitchell I* held that the Indian General Allotment Act (Allotment Act), 24 Stat. 388, as amended, 25 U. S. C. § 331 *et seq.* (1976 ed.) (§§ 331–333 repealed 2000), providing that "the United States does and will hold the land thus allotted . . . in trust for the sole use and benefit of the Indian," § 348; *Mitchell I*, *supra*, at 541, established nothing more than a "bare trust" for the benefit of tribal members. *Mitchell II*, *supra*, at 224. The general trust provision established no duty of the United States to manage timber resources, tribal members, rather, being "responsible for using the land," "occupy[ing] the land," and "manag[ing] the land." 445 U. S., at 542–543. The opposite result obtained in *Mitchell II*, however, based on timber

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[2] Although it appears that the United States has not yet relinquished control of any of the buildings, the United States concedes that "some buildings have fallen into varying states of disrepair, and a few structures have been condemned or demolished." Brief for United States 4. For present purposes we need not address whether or how this affects the Tribe's claims.

management statutes, 25 U. S. C. §§ 406–407, 466, and regulations, 25 CFR pt. 163 (1983), under which the United States assumed "elaborate control" over the tribal forests. 463 U. S., at 209, 225. *Mitchell II* identified a specific trust relationship enforceable by award of damages for breach. *Id.*, at 225–226.

Here, the Court of Federal Claims compared the 1960 Act to the Allotment Act in *Mitchell I*, as creating nothing more than a "bare trust." It saw in the 1960 Act no mandate that the United States manage the site on behalf of the Tribe, and thus no predicate in the statutes and regulations identified by the Tribe for finding a fiduciary obligation enforceable by monetary relief.

The Court of Appeals for the Federal Circuit reversed and remanded, on the understanding that the United States's use of property under the proviso of the 1960 Act triggered the duty of a common law trustee to act reasonably to preserve any property the Secretary had chosen to utilize, an obligation fairly interpreted as supporting a claim for money damages. The Court of Appeals held that the provision for the Government's exclusive control over the building actually occupied raised the trust to the level of *Mitchell II*, in which the trust relationship together with Government's control over the property triggered a specific responsibility.

Chief Judge Mayer dissented on the understanding that the 1960 Act "carve[d] out" from the trust the portions of the property that the Government is entitled to use for its own benefit, with the consequence that the Tribe held only a contingent future interest in the property, insufficient to support even a common law action for permissive waste. 249 F. 3d 1364, 1384 (2001).

We granted certiorari to decide whether the 1960 Act gives rise to jurisdiction over suits for money damages against the United States, 535 U. S. 1016 (2002), and now affirm.

II

A

Jurisdiction over any suit against the Government requires a clear statement from the United States waiving sovereign immunity, *Mitchell I*, *supra*, at 538–539, together with a claim falling within the terms of the waiver, *Mitchell II*, *supra*, at 216–217. The terms of consent to be sued may not be inferred, but must be "unequivocally expressed," *Mitchell I*, *supra*, at 538 (quoting *United States* v. *King*, 395 U. S. 1, 4 (1969)) (internal quotation marks omitted), in order to "define [a] court's jurisdiction," *Mitchell I*, *supra*, at 538 (quoting *United States* v. *Sherwood*, 312 U. S. 584, 586 (1941)) (internal quotation marks omitted). The Tucker Act contains such a waiver, *Mitchell II*, *supra*, at 212, giving the Court of Federal Claims jurisdiction to award damages upon proof of "any claim against the United States founded either upon the Constitution, or any Act of Congress," 28 U. S. C. § 1491(a)(1), and its companion statute, the Indian Tucker Act, confers a like waiver for Indian tribal claims that "otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe," § 1505.

Neither Act, however, creates a substantive right enforceable against the Government by a claim for money damages. *Mitchell I*, *supra*, at 538–540; *Mitchell II*, *supra*, at 216. As we said in *Mitchell II*, a statute creates a right capable of grounding a claim within the waiver of sovereign immunity if, but only if, it "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." 463 U. S., at 217 (quoting *United States* v. *Testan*, 424 U. S. 392, 400 (1976)) (internal quotation marks omitted).

This "fair interpretation" rule demands a showing demonstrably lower than the standard for the initial waiver of sovereign immunity. "Because the Tucker Act supplies a waiver of immunity for claims of this nature, the separate statutes and regulations need not provide a second waiver

of sovereign immunity, nor need they be construed in the manner appropriate to waivers of sovereign immunity." *Mitchell II*, *supra*, at 218–219. It is enough, then, that a statute creating a Tucker Act right be reasonably amenable to the reading that it mandates a right of recovery in damages. While the premise to a Tucker Act claim will not be "lightly inferred," 463 U. S., at 218, a fair inference will do.

B

The two *Mitchell* cases give a sense of when it is fair to infer a fiduciary duty qualifying under the Indian Tucker Act and when it is not. The characterizations of the trust as "limited," *Mitchell I*, 445 U. S., at 542, or "bare," *Mitchell II*, *supra*, at 224, distinguish the Allotment Act's trust-in-name from one with hallmarks of a more conventional fiduciary relationship. See *United States* v. *Navajo Nation*, *post*, at 504 (discussing §§ 1 and 2 of the Allotment Act in *Mitchell I* as having "removed a standard element of a trust relationship"). Although in form the United States "h[e]ld the land . . . in trust for the sole use and benefit of the Indian," 25 U. S. C. § 348, the statute gave the United States no functional obligations to manage timber; on the contrary, it established that "the Indian allottee, and not a representative of the United States, is responsible for using the land," that "the allottee would occupy the land," and that "the allottee, and not the United States, was to manage the land." *Mitchell I*, 445 U. S., at 542–543. Thus, we found that Congress did not intend to "impose any duty" on the Government to manage resources, *id.*, at 542; cf. *Mitchell II*, *supra*, at 217–218, and we made sense of the trust language, considered without reference to any statute beyond the Allotment Act, as intended "to prevent alienation of the land" and to guarantee that the Indian allottees were "immune from state taxation," *Mitchell I*, *supra*, at 544.

The subsequent case of *Mitchell II* arose on a claim that did look beyond the Allotment Act, and we found that stat-

utes and regulations specifically addressing the management of timber on allotted lands raised the fair implication that the substantive obligations imposed on the United States by those statutes and regulations were enforceable by damages. The Department of the Interior possessed "comprehensive control over the harvesting of Indian timber" and "exercise[d] literally daily supervision over [its] harvesting and management," *Mitchell II*, *supra*, at 209, 222 (quoting *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 145, 147 (1980)) (internal quotation marks omitted), giving it a "pervasive" role in the sale of timber from Indian lands under regulations addressing "virtually every aspect of forest management," *Mitchell II*, *supra*, at 219, 220. As the statutes and regulations gave the United States "full responsibility to manage Indian resources and land for the benefit of the Indians," we held that they "define[d] . . . contours of the United States' fiduciary responsibilities" beyond the "bare" or minimal level, and thus could "fairly be interpreted as mandating compensation" through money damages if the Government faltered in its responsibility. 463 U. S., at 224–226.

III

A

The 1960 Act goes beyond a bare trust and permits a fair inference that the Government is subject to duties as a trustee and liable in damages for breach. The statutory language, of course, expressly defines a fiduciary relationship[3] in the provision that Fort Apache be "held by the United

[3] Where, as in *Mitchell II*, 463 U. S. 206, 225 (1983), the relevant sources of substantive law create "[a]ll of the necessary elements of a common-law trust," there is no need to look elsewhere for the source of a trust relationship. We have recognized a general trust relationship since 1831. *Cherokee Nation* v. *Georgia*, 5 Pet. 1, 16 (1831) (characterizing the relationship between Indian tribes and the United States as "a ward to his guardian"); *Mitchell II*, *supra*, at 225 (discussing "the undisputed existence of a general trust relationship between the United States and the Indian people").

States in trust for the White Mountain Apache Tribe." 74 Stat. 8. Unlike the Allotment Act, however, the statute proceeds to invest the United States with discretionary authority to make direct use of portions of the trust corpus. The trust property is "subject to the right of the Secretary of the Interior to use any part of the land and improvements for administrative or school purposes for as long as they are needed for the purpose," *ibid.*, and it is undisputed that the Government has to this day availed itself of its option. As to the property subject to the Government's actual use, then, the United States has not merely exercised daily supervision but has enjoyed daily occupation, and so has obtained control at least as plenary as its authority over the timber in *Mitchell II*. While it is true that the 1960 Act does not, like the statutes cited in that case, expressly subject the Government to duties of management and conservation, the fact that the property occupied by the United States is expressly subject to a trust supports a fair inference that an obligation to preserve the property improvements was incumbent on the United States as trustee. This is so because elementary trust law, after all, confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on his watch. "One of the fundamental common-law duties of a trustee is to preserve and maintain trust assets," *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559, 572 (1985) (citing G. Bogert & G. Bogert, Law of Trusts and Trustees § 582, p. 346 (rev. 2d ed. 1980)); see *United States* v. *Mason*, 412 U. S. 391, 398 (1973) (standard of responsibility is "such care and skill as a man of ordinary prudence would exercise in dealing with his own property" (quoting 2 A. Scott, Trusts 1408 (3d ed. 1967) (internal quotation marks omitted))); Restatement (Second) of Trusts § 176 (1957) ("The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property"). Given this duty on the part of the trustee to preserve corpus,

"it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties."[4] *Mitchell II*, *supra*, at 226.

B

The United States raises three defenses against this conclusion, the first being that the property occupied by the Government is not trust corpus at all. It asserts that in the 1960 Act Congress specifically "carve[d] out of the trust" the right of the Federal Government to use the property for the Government's own purposes. Brief for United States 24–25 (emphasis deleted). According to the United States, this carve-out means that the 1960 Act created even less than the "bare trust" in *Mitchell I*. But this position is at odds with a natural reading of the 1960 Act. It provided that "Fort Apache" was subject to the trust; it did not read that the trust consisted of only the property not used by the Secretary. Nor is there any apparent reason to strain to avoid the straightforward reading; it makes sense to treat even the property used by the Government as trust property, since any use the Secretary would make of it would presumably be intended to redound to the benefit of the Tribe in some way.

Next, the Government contends that no intent to provide a damages remedy is fairly inferable, for the reason that "[t]here is not a word in the 1960 Act—the only substantive

[4] The proper measure of damages is not before us. We mean to imply nothing about the relevance of any historic building or preservation standards. Neither do we address the significance of the fact that a trustee is generally indemnified for the cost of upkeep and maintenance. See Restatement (Second) of Trusts § 244 (1957) ("The trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust"). Nor do we reach the issue whether a rent-free occupant is obligated to supply funds to maintain the property it benefits from. See Restatement of Property § 187, Comment *b* (1936) ("When the right of the owner of the future interest is that the owner of the estate for life shall do a given act, as for example, . . . make repairs . . . then this right is made effective through compelling by judicial action the specific doing of the act").

source of law on which the Tribe relies—that suggests the existence of such a mandate." Brief for United States 28. The argument rests, however, on a failure to appreciate either the role of trust law in drawing a fair inference or the scope of *United States* v. *Testan*, 424 U. S. 392 (1976), and *Army and Air Force Exchange Service* v. *Sheehan*, 456 U. S. 728 (1982), cited in support of the Government's position.

To the extent that the Government would demand an explicit provision for money damages to support every claim that might be brought under the Tucker Act, it would substitute a plain and explicit statement standard for the less demanding requirement of fair inference that the law was meant to provide a damages remedy for breach of a duty. To begin with, this would leave *Mitchell II* a wrongly decided case, for one would look in vain for a statute explicitly providing that inadequate timber management would be compensated through a suit for damages. But the more fundamental objection to the Government's position is that, if carried to its conclusion, it would read the trust relation out of Indian Tucker Act analysis; if a specific provision for damages is needed, a trust obligation and trust law are not. And this likewise would ignore *Mitchell I*, where the trust relationship was considered when inferring that the trust obligation was enforceable by damages. To be sure, the fact of the trust alone in *Mitchell I* did not imply a remedy in damages or even the duty claimed, since the Allotment Act failed to place the United States in a position to discharge the management responsibility asserted. To find a specific duty, a further source of law was needed to provide focus for the trust relationship. But once that focus was provided, general trust law was considered in drawing the inference that Congress intended damages to remedy a breach of obligation.

Sheehan and *Testan* are not to the contrary; they were cases without any trust relationship in the mix of relevant fact, but with affirmative reasons to believe that no damages

remedy could have been intended, absent a specific provision. In *Sheehan*, specific authorization was critical because of a statute that generally granted employees the damages remedy petitioner sought, but "expressly denie[d] that cause of action" to Army and Air Force Exchange Service personnel, such as petitioner. 456 U. S., at 740. In *Sheehan*, resting in part on *Testan*, the Tucker Act plaintiffs unsuccessfully asserted that the Court of Claims had jurisdiction over a claim against the United States for money damages for allegedly improper job classifications under the Classification Act. We stressed that no provision in the statute "expressly makes the United States liable," *Testan*, 424 U. S., at 399, and rather, that there was a longstanding presumption against petitioner's argument. "The established rule is that one is not entitled to the benefit of a position until he has been duly appointed to it . . . . The Classification Act does not purport by its terms to change that rule, and we see no suggestion in it or in its legislative history that Congress intended to alter it." *Id.*, at 402. Thus, in both *Sheehan* and *Testan* we required an explicit authorization of a damages remedy because of strong indications that Congress did not intend to mandate money damages. Together they show that a fair inference will require an express provision, when the legal current is otherwise against the existence of a cognizable claim. But that was not the case in *Mitchell II* and is not the case here.

Finally, the Government argues that the inference of a damages remedy is unsound simply because damages are inappropriate as a remedy for failures of maintenance, prospective injunctive relief being the sole relief tailored to the situation. Reply Brief for United States 19. We think this is clearly wrong. If the Government is suggesting that the recompense for run-down buildings should be an affirmative order to repair them, it is merely proposing the economic (but perhaps cumbersome) equivalent of damages. But if it is suggesting that relief must be limited to an injunction to

toe the fiduciary mark in the future, it would bar the courts from making the Tribe whole for deterioration already suffered, and shield the Government against the remedy whose very availability would deter it from wasting trust property in the period before a Tribe has gone to court for injunctive relief. *Mitchell II*, 463 U. S., at 227 ("Absent a retrospective damages remedy, there would be little to deter federal officials from violating their trust duties, at least until the allottees managed to obtain a judicial decree against future breaches of trust" (quoting *Mitchell I*, 445 U. S., at 550 (internal quotation marks omitted))).

IV

The judgment of the Court of Appeals for the Federal Circuit is affirmed, and the case is remanded to the Court of Federal Claims for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE BREYER joins, concurring.

I join the Court's opinion, satisfied that it is not inconsistent with the opinion I wrote for the Court in *United States* v. *Navajo Nation*, *post*, p. 488.

Both *Navajo* and the instant case are guided by *United States* v. *Mitchell*, 445 U. S. 535 (1980) *(Mitchell I)*, and *United States* v. *Mitchell*, 463 U. S. 206 (1983) *(Mitchell II)*. While *Navajo* is properly aligned with *Mitchell I*, this case is properly ranked with *Mitchell II*. *Mitchell I* and *Mitchell II*, as *Navajo* explains, instruct that "[t]o state a claim cognizable under the Indian Tucker Act . . . , a Tribe must identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties." *Navajo*, *post*, at 506. If the Tribe satisfies that threshold, "the court must then determine whether the relevant source of substantive

law 'can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties [the governing law] impose[s].'" *Ibid.* (quoting *Mitchell II*, 463 U. S., at 219).

In this case, the threshold set by the *Mitchell* cases is met. The 1960 Act, Pub. L. 86–392, 74 Stat. 8, provides that Fort Apache shall be "held by the United States in trust for the White Mountain Apache Tribe" and, at the same time, authorizes the Government to use and occupy the fort. *Ante*, at 469. Thus, as the Court here observes, the Act expressly and without qualification employs a term of art ("trust") commonly understood to entail certain fiduciary obligations, see *ante*, at 474–476, and "invest[s] the United States with discretionary authority to make direct use of portions of the trust corpus," *ante*, at 475; cf. *Navajo*, *post*, at 508 ("no provision of the [Indian Mineral Leasing Act (IMLA)] or its regulations contains *any* trust language with respect to coal leasing"). Further, as the Court describes, the Tribe tenably maintains that the Government has "availed itself of its option" to "exercis[e] daily supervision . . . [and] enjo[y] daily occupation" of the trust corpus, *ante*, at 475, but has done so in a manner irreconcilable with its caretaker obligations. The dispositive question, accordingly, is whether the 1960 measure, in placing property in trust and simultaneously providing for the Government-trustee's use and occupancy, is fairly interpreted to mandate compensation for the harm caused by maladministration of the property.

Navajo, in contrast, turns on the threshold question whether the IMLA and its regulations impose any concrete substantive obligations, fiduciary or otherwise, on the Government. *Navajo* answers that question in the negative. The "controversy . . . falls within *Mitchell I*'s domain," *Navajo* concludes, for "the Tribe's claim for compensation . . . does not derive from any liability-imposing provision of the IMLA or its implementing regulations." *Post*, at 493. The coal-leasing provisions of the IMLA and its allied regula-

tions, *Navajo* explains, lacked the characteristics that typify a genuine trust relationship: Those provisions assigned the Secretary of the Interior no managerial role over coal leasing; they did not even establish the "limited trust relationship" that existed under the law at issue in *Mitchell I*. See *post*, at 507–508.

In the instant case, as the Court's opinion develops, the 1960 Act in fact created a trust not fairly characterized as "bare," given the trustee's authorized use and management. The plenary control the United States exercises under the Act as sole manager and trustee, I agree, places this case within *Mitchell II*'s governance.* To the extent that the Government allowed trust property "to fall into ruin," *ante*, at 475, I further agree, a damages remedy is fairly inferable.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join, dissenting.

The majority's conclusion that the Court of Federal Claims has jurisdiction over this matter finds support in neither the text of the 1960 Act, see Pub. L. 86–392, 74 Stat. 8, nor our case law. As the Court has repeatedly held, the test to determine if Congress has conferred a substantive right enforceable against the Government in a suit for money

**Mitchell I*, 445 U. S. 535 (1980), does not tug against this placement. The General Allotment Act (GAA) at issue in *Mitchell I* narrowly circumscribed its use of the term "trust" by making "the Indian allottee, and not a representative of the United States, . . . responsible for using the land for agricultural or grazing purposes." *Id.*, at 542–543. The GAA thus removed one of the "hallmarks of a more conventional fiduciary relationship." *Ante*, at 473 (citing *Navajo*, *post*, at 504 (the GAA "removed a standard element of a trust relationship.")). The 1960 Act, in contrast, does not modify its mandate that the United States hold the property "in trust for the White Mountain Apache Tribe," except to confirm that the Government-trustee may occupy and use the property. See *ante*, at 475 (internal quotation marks omitted). Occupation of the trust corpus by the trustee is a common feature of trusteeship, and does not itself alter the fiduciary obligations that an expressly created trust ordinarily entails. See *ante*, at 475–476.

damages is whether an Act "can fairly be *interpreted* as mandating compensation by the Federal Government for the damage sustained." *United States* v. *Testan*, 424 U. S. 392, 400 (1976) (quoting *Eastport S. S. Corp.* v. *United States*, 178 Ct. Cl. 599, 607, 372 F. 2d 1002, 1009 (1967)) (emphasis added). Instead of faithfully applying this test, however, the Court engages in a new inquiry, asking whether common-law trust principles permit a "fair inference" that money damages are available, that finds no support in existing law. *Ante*, at 473. But even under the majority's newly devised approach, there is no basis for finding that Congress intended to create anything other than a "bare trust," which we have found insufficient to confer jurisdiction on the Court of Federal Claims in *United States* v. *Mitchell*, 445 U. S. 535 (1980) *(Mitchell I)*. Because the 1960 Act "can[not] fairly be interpreted as mandating compensation by the Federal Government for damage sustained" by the White Mountain Apache Tribe (Tribe), *Testan*, *supra*, at 400, I respectfully dissent.

I

In *United States* v. *Testan*, *supra*, at 400, the Court stated that a "grant of a right of action [for money damages against the United States] must be made with specificity." Accord, *Army and Air Force Exchange Service* v. *Sheehan*, 456 U. S. 728, 739 (1982) (stating that, under the Tucker Act, "jurisdiction over respondent's complaint cannot be premised on the asserted violation of regulations that do not specifically authorize awards of money damages"). The majority agrees that the 1960 Act does not specifically authorize the award of money damages; indeed, the Act does not even "spea[k] in terms of money damages or of a money claim against the United States." *Gnotta* v. *United States*, 415 F. 2d 1271, 1278 (CA8 1969) (Blackmun, J.). Instead, the Court holds that the use of the word "trust" in the 1960 Act creates a "fair inference" that there is a cause of action for money damages in favor of the Tribe. *Ante*, at 474–475.

But the Court made clear in *Mitchell I* that the existence of a trust relationship does not itself create a claim for money damages. The General Allotment Act, the statute at issue in *Mitchell I*, expressly placed responsibility on the United States to hold lands "in trust for the sole use and benefit of the Indian . . . ." 445 U. S., at 541 (quoting 24 Stat. 389, as amended, 25 U. S. C. § 348). Despite this language, the Court concluded that the congressional intent necessary to render the United States liable for money damages was lacking. The Court reasoned that the General Allotment Act created only a "bare trust" because Congress did "not *unambiguously* provide that the United States ha[d] undertaken full fiduciary responsibilities as to the management of allotted lands."[1] 445 U. S., at 542.

The statute under review here provides no more evidence of congressional intent to authorize a suit for money damages than the General Allotment Act did in *Mitchell I*. The Tribe itself acknowledges that the 1960 Act is "silen[t]" not only with respect to money damages, but also with regard to any underlying "maintenance and protection duties" that can fairly be construed as creating a fiduciary relationship. Brief for Respondent 11; see also 249 F. 3d 1364, 1377 (CA Fed. 2001) ("It is undisputed that the 1960 Act does not explicitly define the government's obligations"). Indeed, unlike the statutes and regulations at issue in *United States* v.

[1] The Court of Claims has observed that the relationship between the United States and Indians is not governed by ordinary trust principles: "The general relationship between the United States and the Indian tribes is not comparable to a private trust relationship. When the source of substantive law intended and recognized only the general, or bare, trust relationship, fiduciary obligations applicable to private trustees are not imposed on the United States. Rather, the general relationship between Indian tribes and [the United States] traditionally has been understood to be in the nature of a guardian-ward relationship. A guardianship is not a trust. The duties of a trustee are more intensive than the duties of some other fiduciaries." *Cherokee Nation of Oklahoma* v. *United States*, 21 Cl. Ct. 565, 573 (1990) (citations and internal quotation marks omitted).

Mitchell, 463 U. S. 206 (1983) *(Mitchell II)*, the 1960 Act does not "establish . . . 'comprehensive' responsibilities of the Federal Government in managing the" Fort Apache property. *Id.*, at 222. Because there is nothing in the statute that "clearly establish[es] fiduciary obligations of the Government in the management and operation of Indian lands," the 1960 Act creates only a "bare trust." *Id.*, at 226.

In addition, unlike the statutes and regulations at issue in *Mitchell I* and *Mitchell II*, "[n]othing in the 1960 Act imposes a fiduciary responsibility to manage the fort for the benefit of the Tribe and, in fact, it specifically carves the government's right to unrestricted use for the specified purposes out of the trust." 249 F. 3d, at 1384 (Mayer, C. J., dissenting); see also *id.*, at 1375 ("It is undisputed that the 1960 Act contains no . . . requirement" for the United States "to manage the trust corpus for the benefit of the beneficiaries, *i. e.*, the Native Americans"). The 1960 Act authorizes the "Secretary of the Interior to use any part of the land and improvements for administrative or school purposes for as long as they are needed for that purpose." 74 Stat. 8. The Government's use of the land does not have to inure to the benefit of the Indians. Nor is there any requirement that the United States cede control over the property now or in the future. Thus, if anything, there is less evidence of a fiduciary relationship in the 1960 Act than there was in the General Allotment Act at issue in *Mitchell I*.

If Congress intended to create a compensable trust relationship between the United States and the Tribe with respect to the Fort Apache property, it provided no indication to this effect in the text of the 1960 Act. Accordingly, I would hold that the 1960 Act created only a "bare trust" between the United States and the Tribe.

II

In concluding otherwise, the majority gives far too much weight to the Government's factual "control" over the Fort

Apache property, which is all that distinguishes this case from *Mitchell I*. The majority holds that the United States "has obtained control at least as plenary as its authority over the timber in *Mitchell II*." *Ante*, at 475. This analysis, however, "misconstrues . . . *Mitchell II* by focusing on the extent rather than the nature of control necessary to establish a fiduciary relationship." 46 Fed. Cl. 20, 27 (1999). The "timber management *statutes* . . . and the *regulations* promulgated thereunder," *Mitchell II*, 463 U. S., at 222 (emphasis added), are what led the Court to conclude that there was "pervasive federal control" in the "area of timber sales and timber management," *id.*, at 225, n. 29. But, until now, the Court has never held the United States liable for money damages under the Tucker Act or Indian Tucker Act based on notions of factual control that have no foundation in the actual text of the relevant statutes.

Respondent argues that *Mitchell II* raised control to talismanic significance in our Indian Tucker Act jurisprudence. To be sure, the Court did state:

> "[A] fiduciary relationship necessarily arises when the Government assumes such elaborate control over forests and properties belonging to the Indians. . . . '[W]here the Federal Government takes on or has control or supervision over tribal monies or properties . . . (unless Congress has provided otherwise) even though nothing is said expressly in the authorizing or underlying statute (or other fundamental document) about a trust fund, or a trust or fiduciary connection.'" *Id.*, at 225 (quoting *Navajo Tribe* v. *United States*, 224 Ct. Cl. 171, 183, 624 F. 2d 981, 987 (1980)).

However, this case does not involve the level of "*elaborate* control over" the Tribe's property that the Court found sufficient to create a compensable trust duty in *Mitchell II*. *Mitchell II* involved a "comprehensive" regulatory scheme that "addressed virtually every aspect of forest manage-

ment," and under which the United States assumed "*full* responsibility to manage Indian resources and land for the benefit of the Indians." 463 U. S., at 220, 222, 224 (emphasis added). Here, by contrast, there are no management duties set forth in any "fundamental document," and thus the United States has the barest degree of control over the Tribe's property. And, unlike *Mitchell II*, the bare control that *is* exercised by the United States over the property does not inure to the benefit of the Indians. *Supra*, at 484. In my view, this is more than sufficient to distinguish this case from *Mitchell II*.

Moreover, even assuming that *Mitchell II* can be read to support the proposition that mere factual control over property is sufficient to create compensable trust duties (which it cannot), the Court has never provided any guidance on the nature and scope of such duties. And, in any event, the Court has never before held that "control" alone can give rise to, as the majority puts it, the specific duty to "preserve the property." *Ante*, at 475. Indeed, had Congress wished to create such a duty, it could have done so expressly in the 1960 Act. Its failure to follow that course strongly suggests that Congress did not intend to create a compensable trust relationship between the United States and the Tribe.

In addition, the Court's focus on control has now rendered the inquiry open-ended, with questions of jurisdiction determined by murky principles of the common law of trusts,[2] and

[2] Even assuming the common law of trusts is relevant to determining whether a claim of money damages exists against the United States, it is well established that a trustee is not ultimately liable for the costs of upkeep and maintenance of the trust property. See Restatement (Second) of Trusts § 244 (1957) ("The trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust"); 3A A. Scott & W. Fratcher, The Law of Trusts § 244, p. 325 (4th ed. 1988) ("[The trustee] is entitled to indemnity for liabilities properly incurred for the payment of taxes, for repairs, for improvements . . ."). Besides making the bald assertion that money damages "naturally follo[w]" from the existence of a trust duty, *ante*, at 476 (internal quotation

a parcel-by-parcel determination whether "portions of the property were under United States control," 249 F. 3d, at 1383. Such an approach provides little certainty to guide Congress in fashioning legislation that insulates the United States from damages for breach of trust. Instead, to the ultimate detriment of the Tribe, Congress might refrain from creating trust relationships out of apprehension that the use of the word "trust" will subject the United States to liability for money damages.

* * *

The Court today fashions a new test to determine whether Congress has conferred a substantive right enforceable against the United States in a suit for money damages. In doing so, the Court radically alters the relevant inquiry from one focused on the actual fiduciary duties created by statute or regulation to one divining fiduciary duties out of the use of the word "trust" and notions of factual control. See *ante*, at 474–475. Because I find no basis for this approach in our case law or in the language of the Indian Tucker Act, I respectfully dissent.

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marks omitted), the Court makes no attempt to explain how a damages remedy lies against the United States when the same remedy would not be available against a private trustee.

Syllabus

UNITED STATES *v.* NAVAJO NATION

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

No. 01–1375. Argued December 2, 2002—Decided March 4, 2003

The Indian Mineral Leasing Act of 1938 (IMLA) provides that "[u]nallotted lands within any Indian reservation," or otherwise under federal jurisdiction, "may, with the approval of the Secretary [of the Interior (Secretary)] . . . , be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians." 25 U. S. C. § 396a. The IMLA aims to provide Indian tribes with a profitable source of revenue and to foster tribal self-determination by giving Indians a greater say in the use and disposition of the resources on their lands.

In 1964, the Navajo Nation (Tribe) permitted the predecessor of Peabody Coal Company (Peabody) to mine coal on the Tribe's lands pursuant to Lease 8580 (Lease or Lease 8580). The Lease established a maximum royalty rate of 37.5 cents per ton of coal, but made that figure subject to reasonable adjustment by the Secretary on the 20-year anniversary of the Lease and every ten years thereafter. As Lease 8580's 20-year anniversary approached, its 37.5 cents per ton rate yielded for the Tribe about 2 percent of gross proceeds. This return was higher than the ten cents per ton minimum established by then-applicable regulations implementing the IMLA. It was substantially lower, however, than the rate Congress established in 1977 as the minimum permissible royalty for coal mined on federal lands under the Mineral Leasing Act. In June 1984, the Area Director of the Bureau of Indian Affairs, acting pursuant to authority delegated by the Secretary and at the Tribe's request, sent Peabody an opinion letter raising the Lease 8580 rate to 20 percent of gross proceeds. While Peabody's administrative appeal was pending before Deputy Assistant Secretary for Indian Affairs John Fritz, Peabody wrote to Secretary Hodel, asking him either to postpone decision on the appeal or to rule in Peabody's favor. Peabody representatives also met privately with Hodel during that period. In July 1985, Hodel sent a memorandum to Fritz "suggest[ing]" that he inform the parties that his decision was not imminent and urging them to continue their efforts to resolve the matter in a mutually agreeable fashion. The Tribe resumed negotiations with Peabody. In November 1985, the parties agreed to amend the Lease to provide, among other things, for a royalty rate of 12½ percent of monthly gross proceeds, which was the

then-customary rate for coal leases on federal and Indian lands. Pursuant to 25 U. S. C. § 396a, Secretary Hodel approved the amended Lease in December 1987.

In 1993, the Tribe brought this action for damages against the United States, alleging, *inter alia*, that the Secretary's approval of the Lease amendments constituted a breach of trust. Although granting summary judgment for the United States, the Court of Federal Claims found that the Secretary had flagrantly dishonored the Government's general fiduciary duties to the Tribe by acting in Peabody's best interests rather than those of the Tribe. The court nevertheless concluded that the Tribe had entirely failed to link that breach of duty to any statutory or regulatory obligation which could be fairly interpreted as mandating compensation for the Government's actions. The Federal Circuit reversed. Relying on 25 U. S. C. § 399 and regulations promulgated thereunder, the appeals court determined that the measure of control the Secretary exercised over the leasing of Indian lands for mineral development sufficed to warrant a money judgment against the United States. Agreeing with the Federal Claims Court that the Secretary's actions regarding Peabody's administrative appeal violated the Government's fiduciary obligations to the Tribe, the Court of Appeals remanded for further proceedings, including a determination of damages.

Held: United States v. *Mitchell*, 445 U. S. 535 *(Mitchell I)*, and *United States* v. *Mitchell*, 463 U. S. 206 *(Mitchell II)*, control this case. The controversy here falls within *Mitchell I*'s domain, and the Tribe's claim for compensation from the Government fails, for it does not derive from any liability-imposing provision of the IMLA or its implementing regulations. Pp. 502–514.

(a) To state a litigable claim, a tribal plaintiff must invoke a rights-creating source of substantive law that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *Mitchell II*, 463 U. S., at 218. Although the Indian Tucker Act, 28 U. S. C. § 1505, confers jurisdiction upon the Court of Federal Claims in cases where this requirement is met, the Act is not itself a source of substantive rights. *E. g.*, *Mitchell II*, 463 U. S., at 216. Pp. 502–503.

(b) *Mitchell I* and *Mitchell II* are the pathmarking precedents on the question whether a statute or regulation (or combination thereof) "can fairly be interpreted as mandating compensation by the Federal Government." *Mitchell II*, 463 U. S., at 218. In *Mitchell I*, the Court held that the Indian General Allotment Act of 1887 (GAA)—which authorized the President to allot agricultural or grazing land to individual tribal members residing on a reservation, 25 U. S. C. § 331, and provided that

the Government would hold land thus allotted in trust for the sole use and benefit of the allottee, § 348—did not authorize an award of money damages against the United States for alleged mismanagement of forests located on allotted lands. The Court concluded that the GAA created only a limited trust relationship that did not impose any duty upon the Government to manage timber resources. *Mitchell I*, 445 U. S., at 542. In *Mitchell II*, however, the Court held that a network of other statutes and regulations did impose judicially enforceable fiduciary duties upon the United States in its management of forested allotted lands, 463 U. S., at 222–224, and that the relevant prescriptions could fairly be interpreted as mandating compensation by the Federal Government when it breached those duties, *id.*, at 226–227. To state a claim cognizable under the Indian Tucker Act, *Mitchell I* and *Mitchell II* instruct, a tribe must identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties. See *Mitchell II*, 463 U. S., at 216–217, 219. If that threshold is passed, the court must then determine whether the relevant source of substantive law "can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties [the governing law] impose[s]." *Id.*, at 219. Although "the undisputed existence of a general trust relationship between the United States and the Indian people" can "reinforc[e]" the conclusion that the relevant statute or regulation imposes fiduciary duties, *id.*, at 225, that relationship alone is insufficient to support jurisdiction under the Indian Tucker Act. Instead, the analysis must train on specific rights-creating or duty-imposing statutory or regulatory prescriptions. Those prescriptions, however, need not expressly provide for money damages; the availability of such damages may be inferred. See *id.*, at 217, n. 16. Pp. 503–506.

(c) The statutes and regulations at issue cannot fairly be interpreted as mandating compensation for the Government's alleged breach of trust in this case. Pp. 506–514.

(1) The IMLA and its regulations do not provide the requisite "substantive law" that "mandat[es] compensation by the Federal Government." *Mitchell II*, 463 U. S., at 218. They impose no obligations resembling the detailed fiduciary responsibilities that *Mitchell II* found adequate to support a claim for money damages. The IMLA simply requires Secretarial approval before coal mining leases negotiated between Tribes and third parties become effective, § 396a, and authorizes the Secretary generally to promulgate regulations governing mining operations, § 396d. Unlike the "elaborate" provisions before the Court in *Mitchell II*, 463 U. S., at 225, the IMLA and its regulations do not "give the Federal Government full responsibility to manage Indian

resources . . . for the benefit of the Indians," *id.*, at 224. The Secretary is neither assigned a comprehensive managerial role nor, at the time relevant here, expressly invested with responsibility to secure "the needs and best interests of the Indian owner and his heirs." *Ibid.* Instead, the Secretary's involvement in coal leasing under the IMLA more closely resembles the role provided for the Government by the GAA regarding allotted forest lands. See *Mitchell I*, 445 U. S., at 540–544. Although the GAA required the Government to hold allotted land in trust for allottees, that Act did not "authoriz[e], much less requir[e], the Government to manage timber resources for the benefit of Indian allottees." *Id.*, at 545. Similarly here, the IMLA and its regulations do not assign to the Secretary managerial control over coal leasing. Nor do they even establish the "limited trust relationship," *id.*, at 542, existing under the GAA; no provision of the IMLA or its regulations contains *any* trust language with respect to coal leasing. Moreover, as in *Mitchell I*, imposing fiduciary duties on the Government here would be out of line with one of the statute's principal purposes, enhancing tribal self-determination. See *id.*, at 543. Pp. 506–508.

(2) The Court rejects the Tribe's arguments that the Secretary's actions in this case violated discrete statutory and regulatory provisions whose breach is redressable in a damages action. The Tribe misplaces reliance on 25 U. S. C. § 399, which is not part of the IMLA and does not govern Lease 8580. Enacted almost 20 years before the IMLA, § 399 authorizes *the Secretary* to lease certain unallotted Indian lands for mining purposes on terms she sets, and does not provide for input from the Tribes concerned. That authorization does not bear on the Secretary's more limited *approval* role under the IMLA. Similarly unavailing is the Tribe's reliance on the Indian Mineral Development Act of 1982 (IMDA), 25 U. S. C. § 2101 *et seq.* The IMDA governs the Secretary's approval of agreements for the development of certain Indian mineral resources through exploration and like activities. It does not establish standards governing her approval of mining *leases* negotiated by a Tribe and a third party, such as Lease 8580. The Tribe's vigorously pressed arguments headlining § 396a, the IMLA's general prescription, fare no better. Asserting that Secretary Hodel violated a § 396a duty to review and approve proposed coal leases only to the extent they are in the Tribe's best interests, the Tribe points to various Government reports identifying 20 percent as the appropriate royalty, and to the Secretary's decision, made after receiving *ex parte* communications from Peabody, to withhold departmental action. In the circumstances presented, the Tribe maintains, Hodel's eventual approval of the 12½ percent royalty rate violated § 396a in two ways: (1) It was improvident because it allowed conveyance of the Tribe's coal for what Hodel knew

Syllabus

to be about half of its value, and (2) it was unfair because Hodel's intervention into the Lease adjustment process skewed the bargaining by depriving the Tribe of the 20 percent rate. These arguments fail, for they assume substantive prescriptions not found in § 396a. As to the first argument, because neither the IMLA nor any of its regulations establishes anything more than a bare minimum royalty, there is no textual basis for concluding that the Secretary's approval function includes a duty, enforceable in an action for money damages, to ensure a higher rate of return for the Tribe. Similarly, the Tribe's second argument is not grounded in specific statutory or regulatory language. Nothing in § 396a or the IMLA's implementing regulations proscribed the *ex parte* communications in this case, which occurred during an administrative appeal process largely unconstrained by formal requirements. Moreover, even if Deputy Assistant Secretary Fritz had rendered an opinion affirming the 20 percent royalty approved by the Area Director, the Secretary could have set aside or modified his subordinate's decision in the exercise of his authority as head of the Interior Department. Accordingly, rejection of Peabody's appeal by Fritz would not necessarily have yielded a higher royalty for the Tribe. Pp. 509–514.

263 F. 3d 1325, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, THOMAS, and BREYER, JJ., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS and O'CONNOR, JJ., joined, *post,* p. 514.

Deputy Solicitor General Kneedler argued the cause for the United States. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Sansonetti*, *Deputy Assistant Attorney General Clark*, *Gregory G. Garre*, *Todd S. Aagaard*, and *R. Anthony Rogers.*

Paul E. Frye argued the cause for respondent. With him on the brief were *Richard W. Hughes*, *David O. Stewart*, *Samuel J. Buffone*, *Levon B. Henry*, and *Richard B. Collins.**

**V. Thomas Lankford* and *Terrance G. Reed* filed a brief for the Peabody Coal Co. et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Jicarilla Apache Nation et al. by *Jill Elise Grant;* for the Mississippi Band of Choc-

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the Indian Mineral Leasing Act of 1938 (IMLA), 52 Stat. 347, 25 U. S. C. § 396a *et seq.*, and the role it assigns to the Secretary of the Interior (Secretary) with respect to coal leases executed by an Indian Tribe and a private lessee. The controversy centers on 1987 amendments to a 1964 coal lease entered into by the predecessor of Peabody Coal Company (Peabody) and the Navajo Nation (Tribe), a federally recognized Indian Tribe. The Tribe seeks to recover money damages from the United States for an alleged breach of trust in connection with the Secretary's approval of coal lease amendments negotiated by the Tribe and Peabody. This Court's decisions in *United States* v. *Mitchell*, 445 U. S. 535 (1980) *(Mitchell I)*, and *United States* v. *Mitchell*, 463 U. S. 206 (1983) *(Mitchell II)*, control this case. Concluding that the controversy here falls within *Mitchell I*'s domain, we hold that the Tribe's claim for compensation from the Federal Government fails, for it does not derive from any liability-imposing provision of the IMLA or its implementing regulations.

I

A

The IMLA, which governs aspects of mineral leasing on Indian tribal lands, states that "unallotted lands within any Indian reservation," or otherwise under federal jurisdiction, "may, with the approval of the Secretary . . . , be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities." § 396a. In addition "to provid[ing] Indian tribes with a profitable source of revenue," *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S.

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taw Indians by *Charles A. Hobbs* and *Christopher T. Stearns;* and for the National Congress of American Indians by *Jeffrey S. Sutton* and *John E. Echohawk.*

163, 179 (1989), the IMLA aimed to foster tribal self-determination by "giv[ing] Indians a greater say in the use and disposition of the resources found on Indian lands," *BHP Minerals Int'l Inc.*, 139 I. B. L. A. 269, 311 (1997).

Prior to enactment of the IMLA, decisions whether to grant mineral leases on Indian land generally rested with the Government. See, *e. g.,* Act of June 30, 1919, ch. 4, § 26, 41 Stat. 31, as amended, 25 U. S. C. § 399; see also *infra*, at 509 (describing § 399). Indian consent was not required, and leases were sometimes granted over tribal objections. See H. R. Rep. No. 1872, 75th Cong., 3d Sess., 2 (1938); S. Rep. No. 985, 75th Cong., 1st Sess., 2 (1937); 46 Fed. Cl. 217, 230 (2000). The IMLA, designed to advance tribal independence, empowers Tribes to negotiate mining leases themselves, and, as to coal leasing, assigns primarily an approval role to the Secretary.

Although the IMLA covers mineral leasing generally, in a number of discrete provisions it deals particularly with oil and gas leases. See 25 U. S. C. § 396b (requirements for public auctions of oil and gas leases); § 396d (oil and gas leases are "subject to the terms of any reasonable cooperative unit or other plan approved or prescribed by [the] Secretary"); § 396g ("[T]o avoid waste or to promote the conservation of natural resources or the welfare of the Indians," the Secretary may approve leases of Indian lands "for the subsurface storage of oil and gas."). The IMLA contains no similarly specific prescriptions for coal leases; it simply remits coal leases, in common with all mineral leases, to the governance of rules and regulations promulgated by the Secretary. § 396d.

During all times relevant here, the IMLA regulations provided that "Indian tribes . . . may, with the approval of the Secretary . . . or his authorized representative, lease their land for mining purposes." 25 CFR § 211.2 (1985). In line with the IMLA itself, the regulations treated oil and gas leases in more detail than coal leases. The regulations re-

garding royalties, for example, specified procedures applicable to oil and gas leases, including criteria for the Secretary to employ in setting royalty rates. §§ 211.13, 211.16, 211.17. As to coal royalties, in contrast, the regulations required only that the rate be "not less than 10 cents per ton." § 211.15(c). No other limitation was placed on the Tribe's negotiating capacity or the Secretary's approval authority.[1]

B

The Tribe involved in this case occupies the largest Indian reservation in the United States. Over the past century, large deposits of coal have been discovered on the Tribe's reservation lands, which are held for it in trust by the United States. Each year, the Tribe receives millions of dollars in royalty payments pursuant to mineral leases with private companies.

Peabody mines coal on the Tribe's lands pursuant to leases covered by the IMLA. This case principally concerns Lease 8580 (Lease or Lease 8580), which took effect upon approval by the Secretary in 1964. App. 188–220. The Lease established a maximum royalty rate of 37.5 cents per ton of coal, *id.*, at 191, but made that figure "subject to reasonable adjustment by the Secretary of the Interior or his authorized representative" on the 20-year anniversary of the Lease and every ten years thereafter, *id.*, at 194.

As the 20-year anniversary of Lease 8580 approached, its royalty rate of 37.5 cents per ton yielded for the Tribe only "about 2% of gross proceeds." 263 F. 3d 1325, 1327 (CA Fed. 2001). This return was higher than the ten cents per ton minimum established by the then-applicable IMLA regula-

[1] In 1996, well after the events at issue here, the minimum rate on new coal leases was increased to "12½ percent of the value of production produced and sold from the lease." 61 Fed. Reg. 35658 (1996); 25 CFR § 211.43(a)(2) (1997). The amended regulations further state, however, that "[a] lower royalty rate shall be allowed if it is determined to be in the best interest of the Indian mineral owner." § 211.43(b).

tions. See 25 CFR §211.15(c) (1985). It was substantially lower, however, than the 12½ percent of gross proceeds rate Congress established in 1977 as the minimum permissible royalty for coal mined on federal lands under the Mineral Leasing Act. See Pub. L. 94–377, §6, 90 Stat. 1087, as amended, 30 U. S. C. §207(a). For some years starting in the 1970's, to gain a more favorable return, the Tribe endeavored to renegotiate existing mineral leases with private lessees, including Peabody. See App. 138–139, 143–144.

In March 1984, the Chairman of the Navajo Tribal Council wrote to the Secretary asking him to exercise his contractually conferred authority to adjust the royalty rate under Lease 8580. On June 18, 1984, the Director of the Bureau of Indian Affairs for the Navajo Area, acting pursuant to authority delegated by the Secretary, sent Peabody an opinion letter raising the rate to 20 percent of gross proceeds. *Id.*, at 8–9.

Contesting the Area Director's rate determination, Peabody filed an administrative appeal in July 1984, pursuant to 25 CFR §2.3(a) (1985). 46 Fed. Cl., at 222.[2] The appeal was referred to the Deputy Assistant Secretary for Indian Affairs, John Fritz, then acting as both Commissioner of Indian Affairs and Assistant Secretary of Indian Affairs, 263 F. 3d, at 1328. In March 1985, Fritz permitted Peabody to supplement its brief and requested additional cost, revenue, and investment data. 46 Fed. Cl., at 222. He thereafter appeared ready to reject Peabody's appeal. *Ibid.;* App. 89–97 (undated draft letter). By June 1985, both Peabody and the Tribe anticipated that an announcement favorable to the Tribe was imminent. *Id.*, at 98–99.[3]

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[2] As required by the regulations, see 25 CFR §2.11 (1985), Peabody served its notice of appeal on the Tribe, which exercised its right to file a response, see §2.12.

[3] The regulations then in effect required the Deputy Assistant Secretary to "[r]ender a written decision on the appeal" or "[r]efer the appeal to the Board of Indian Appeals" (Board), "[w]ithin 30 days after all time for

On July 5, 1985, a Peabody Vice President wrote to Interior Secretary Donald Hodel, asking him either to postpone decision on Peabody's appeal so the parties could seek a negotiated settlement, or to rule in Peabody's favor. *Id.*, at 98–100. A copy of Peabody's letter was sent to the Tribe, *id.*, at 100, which then submitted its own letter urging the Secretary to reject Peabody's request and to secure the Department's prompt release of a decision in the Tribe's favor, *id.*, at 119–121. Peabody representatives met privately with Secretary Hodel in July 1985, 46 Fed. Cl., at 222; no representative of the Tribe was present at, or received notice of, that meeting, *id.*, at 219.

On July 17, 1985, Secretary Hodel sent a memorandum to Deputy Assistant Secretary Fritz. App. 117–118. The memorandum "suggest[ed]" that Fritz "inform the involved parties that a decision on th[e] appeal is not imminent and urge them to continue with efforts to resolve this matter in a mutually agreeable fashion." *Id.*, at 117. "Any royalty adjustment which is imposed on those parties without their concurrence," the memorandum stated, "will almost certainly be the subject of protracted and costly appeals," and "could well impair the future of the contractual relationship"

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pleadings . . . has expired." § 2.19(a). Because more than 30 days had elapsed by June 1985, App. 12, either party would have been entitled to have the matter transferred to the Board. 25 CFR § 2.19(b) (1985). Neither Peabody nor the Tribe chose to go that route, which would have entailed a formalized (and possibly protracted) additional administrative process. See § 2.3(c) ("Appeals to the Board of Indian Appeals shall be made in the manner provided in Department Hearings and Appeals Procedures in 43 CFR Part 4, Subpart D."); 43 CFR §§ 4.310–4.317 (1985) (general rules applicable to proceedings on appeal before the Board); §§ 4.330–4.340 (special rules applicable to appeals from administrative actions of officials of the Bureau of Indian Affairs). At the conclusion of proceedings before the Board, either side could have sought reconsideration, § 4.315(a), or requested further review by the Director of the Office of Hearings and Appeals, § 4.5(b), or by the Secretary of the Interior, § 4.5(a).

between the parties. *Ibid.*[4] Secretary Hodel added, however, that the memorandum was "not intended as a determination of the merits of the arguments of the parties with respect to the issues which are subject to the appeal." *Id.*, at 118.

The Tribe was not told of the Secretary's memorandum to Fritz, but learned that "'someone from Washington' had urged a return to the bargaining table." 46 Fed. Cl., at 223; see App. 342–344. Facing "severe economic pressure," 263 F. 3d, at 1328; App. 355–356, the Tribe resumed negotiations with Peabody in August 1985, 46 Fed. Cl., at 223.

On September 23, 1985, the parties reached a tentative agreement on a package of amendments to Lease 8580. *Ibid.*[5] They agreed to raise the royalty rate to 12½ percent of monthly gross proceeds, and to make the new rate retroactive to February 1, 1984. App. 287. The 12½ percent rate was at the time customary for leases to mine coal on federal lands and on Indian lands.[6] The amendments acknowledged

[4] The Deputy Assistant Secretary's draft opinion letter stated that the ruling "is based on the exercise of my discretionary authority and is final for the Department." App. 97. Had the letter issued, Peabody would not have been entitled to seek further review by the Board. See 25 CFR § 2.19(c)(2) (1985) (the Board may review decisions by the Commissioner of Indian Affairs only if the decision states that it "is based on interpretation of law"); see also *supra*, at 496 (Deputy Assistant Secretary was acting as the Commissioner of Indian Affairs). But even if the opinion letter had issued as drafted, Peabody could have asked Secretary Hodel to exercise his "authority to review any decision of any employee or employees of the Department." 43 CFR § 4.5(a)(2) (1985). The Secretary could have "render[ed] the final decision" himself, § 4.5(a)(1), or "direct[ed the Deputy Assistant Secretary] to reconsider [his] decision," § 4.5(a)(2).

[5] The parties also agreed to raise the royalty rate under another lease not in issue here, which covered coal located within a former joint use area shared by the Navajo Nation and the Hopi Tribe. 46 Fed. Cl. 217, 224 (2000). Unlike Lease 8580, that lease did not contain a provision subjecting its rate to reasonable adjustment by the Secretary. *Id.*, at 233.

[6] Twelve and one-half percent is the minimum royalty rate set by Congress for leases to mine coal on federal lands, see 30 U. S. C. § 207(a), and is also the customary rate found in most such leases issued or readjusted after 1976, see Department of Interior, Minerals Management Serv., Min-

the legitimacy of tribal taxation of coal production, but stipulated that the tax rate would be capped at eight percent. *Id.*, at 295, 299.[7] In addition, Peabody agreed to pay the

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erals Revenue Management, General Federal and American Indian Mineral Lease Terms (Jan. 2, 2003), http://www.mrm.mms.gov/Stats/pdfdocs/lse_term.pdf (available in Clerk of Court's case file). The Tribe identifies a single federal coal lease with a royalty rate of 17.08 percent, see Brief for Respondent 11, but, as the Government points out, that lease was "part of an experimental leasing policy tried by the Department for a short time," Reply Brief 12, n. 7 (quoting *Peabody Coal Co.*, 93 I. B. L. A. 317, 320 (1986)). Between 1984 and 1988, the Department of the Interior's practice was not to approve IMLA leases with royalties less than the minimum rate for federal coal, *i. e.*, 12½ percent. See App. in No. 00–5086 (CA Fed.), p. A1872. As late as 1996 the customary royalty rate for coal leases on Indian lands issued or readjusted after 1976 did not exceed 12½ percent. See Department of Interior, Minerals Management Serv., Mineral Revenues 1996, Report on Receipts from Federal and Indian Leases 128 (Table 47) (Jan. 2, 2003), http://www.mrm.mms.gov/stats/pdfdocs/mrr96fin.pdf (available in Clerk of Court's case file).

The Tribe argues, in its presentation to this Court, that the 12½ percent provided in amended Lease 8580 is only a "facial royalty rate," Brief for Respondent 11, and that the actual rate is lower, see Tr. of Oral Arg. 33. That assertion is based in part on the Tribe's agreement under the amended Lease to relinquish its claim for $33 million in back taxes and $56 million in back royalties, see 46 Fed. Cl., at 224, and in part on proposed findings of fact the Tribe submitted to the Court of Federal Claims, which the Government did not specifically dispute. See App. in No. 00–5086 (CA Fed.), pp. A2703–A2727. The proposed findings stated that a provision in the amended Lease "signifying a non-standard method of calculating the royalty," App. 180 (Proposed Findings ¶ 314), "resulted in royalty payments lower than the minimum allowable for federal coal," *id.*, at 181 (Proposed Findings ¶ 315). To the extent the Tribe here assails the Secretary's approval of Lease 8580 as inconsistent with the then-prevailing federal policy not to approve rates below 12½ percent, we do not pursue the point, for the Tribe failed to rely on it below. See 46 Fed. Cl., at 233 ("[T]here is no claim by the [Tribe] that the [Secretary's] 1987 approval of Lease 8580 . . . ran afoul of th[e] [federal] policy" of not approving IMLA leases with royalty rates of less than 12½ percent.).

[7] Before this Court's decision in *Kerr-McGee Corp.* v. *Navajo Tribe*, 471 U. S. 195 (1985), it was unsettled whether the Tribe could levy taxes without the approval of the Secretary of the Interior. The imposition of a severance tax, of course, augmented the amount payable by the lessee

Tribe $1.5 million when the amendments became effective, and $7.5 million more when Peabody began mining additional coal, as authorized by the Lease amendments. *Id.*, at 292–293. The agreement "also addressed ancillary matters such as provisions for future royalty adjustments, arbitration procedures, rights of way, the establishment of a tribal scholarship fund, and the payment by Peabody of back royalties, bonuses, and water payments." 46 Fed. Cl., at 224. "In consideration of the benefits associated with these lease amendments," the parties agreed to move jointly to vacate the Area Director's June 1984 decision, which had raised the royalty to 20 percent. App. 286.

In August 1987, the Navajo Tribal Council approved the amendments. 46 Fed. Cl., at 224. The parties signed a final agreement in November 1987, App. 309, and Secretary Hodel approved it on December 14, 1987, *id.*, at 337–339. Shortly thereafter, pursuant to the parties' stipulation, the Area Director's decision was vacated. 46 Fed. Cl., at 224.

In 1993, the Tribe brought suit against the United States in the Court of Federal Claims, alleging, *inter alia*, that the Secretary's approval of the amendments to the Lease constituted a breach of trust. The Tribe sought $600 million in damages.[8]

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to the Tribe. See 46 Fed. Cl., at 224 (royalties and taxes combined "would . . . permit the tribe to realize as much as 20.5 percent"). But see Tr. of Oral Arg. 43–44 ("[W]e can't tax 60 percent of the coal because it goes to the Navajo [G]enerating [S]tation which has a tax waiver in the plant site lease.").

[8] The Tribe has filed a separate action against Peabody, claiming improper influence over the Government's actions with respect to the Lease. See *Navajo Nation* v. *Peabody Holding Co.*, Civ. Action No. 99–469 (D. C., June 24, 2002). The Tribe's complaint in that action alleges violations of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U. S. C. § 1961 *et seq.*, and related wrongdoing, *inter alia*, breach of contract, interference with fiduciary relationship, conspiracy, and fraudulent concealment. See *Navajo Nation* v. *Peabody Holding Co.*, 209 F. Supp. 2d 269, 272 (DC 2002) (ruling on pretrial motions).

The Court of Federal Claims granted summary judgment for the United States. 46 Fed. Cl. 217 (2000). In no uncertain terms, that court found that the Government owed general fiduciary duties to the Tribe, which, in its view, the Secretary had flagrantly dishonored by acting in the best interests of Peabody rather than the Tribe. Nevertheless, the court concluded that the Tribe had entirely failed to link that breach of duty to any statutory or regulatory obligation which could "be fairly interpreted as mandating compensation for the government's fiduciary wrongs." *Id.*, at 236. Accordingly, the court held that the United States was entitled to judgment as a matter of law.[9]

The Court of Appeals for the Federal Circuit reversed. 263 F. 3d 1325 (2001). The Government's liability to the Tribe, it said, turned on whether "the United States controls the Indian resources." *Id.*, at 1329. Relying on 25 U. S. C. § 399 and regulations promulgated thereunder, the Court of Appeals determined that the measure of control the Secretary exercised over the leasing of Indian lands for mineral development sufficed to warrant a money judgment against the United States for breaches of fiduciary duties connected to coal leasing. 263 F. 3d, at 1330–1332. But see *infra*, at 509. The appeals court agreed with the Federal Claims Court that the Secretary's actions regarding Peabody's administrative appeal violated the Government's fiduciary obligations to the Tribe, in that those actions "suppress[ed] and conceal[ed]" the decision of the Deputy Assistant Secretary, and "thereby favor[ed] Peabody interests to the detriment of Navajo interests." 263 F. 3d, at 1332. Based on these

[9] The Court of Federal Claims also rejected the Tribe's claim for breach of contract, determining that the Secretary was not a party to the Lease and that his contractual authority to adjust the Lease-specified royalty rate carried with it no obligation to do so. 46 Fed. Cl., at 234–236. The Tribe did not appeal that ruling.

determinations, the Court of Appeals remanded for further proceedings, including a determination of damages. *Id.*, at 1333.

Judge Schall concurred in part and dissented in part. *Id.*, at 1333–1341. It was not enough, he maintained, for the Tribe to show a violation of a general fiduciary relationship stemming from federal involvement in a particular area of Indian affairs. Rather, a Tribe "must show the breach of a specific fiduciary obligation that falls within the contours of the statutes and regulations that create the general fiduciary relationship at issue." *Id.*, at 1341. In his view, "the only government action in this case that implicated a specific fiduciary responsibility" was the Secretary's 1987 approval of the Lease amendments. *Id.*, at 1339. The Secretary had been deficient, Judge Schall concluded, in approving the amendments without first conducting an independent economic analysis of the amended agreement. *Id.*, at 1339–1341.

The Court of Appeals denied rehearing. We granted certiorari, 535 U. S. 1111 (2002), and now reverse.

II

A

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *Mitchell II*, 463 U. S., at 212. The Tribe asserts federal subject-matter jurisdiction under 28 U. S. C. §1505, known as the Indian Tucker Act. That Act provides:

> "The United States Court of Federal Claims shall have jurisdiction of any claim against the United States accruing after August 13, 1946, in favor of any tribe . . . whenever such claim is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would

> be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe, band, or group."[10]

"If a claim falls within the terms of the [Indian] Tucker Act, the United States has presumptively consented to suit." *Mitchell II*, 463 U. S., at 216.

Although the Indian Tucker Act confers jurisdiction upon the Court of Federal Claims, it is not itself a source of substantive rights. *Ibid.*; see *Mitchell I*, 445 U. S., at 538. To state a litigable claim, a tribal plaintiff must invoke a rights-creating source of substantive law that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *Mitchell II*, 463 U. S., at 218. Because "[t]he [Indian] Tucker Act itself provides the necessary consent" to suit, *ibid.*, however, the rights-creating statute or regulation need not contain "a second waiver of sovereign immunity," *id.*, at 218–219.

B

Mitchell I and *Mitchell II* are the pathmarking precedents on the question whether a statute or regulation (or combination thereof) "can fairly be interpreted as mandating compensation by the Federal Government." *Mitchell II*, 463 U. S., at 218.

In *Mitchell I*, we considered whether the Indian General Allotment Act of 1887 (GAA), 24 Stat. 388, as amended, 25 U. S. C. § 331 *et seq.* (1976 ed.) (§§ 331–333 repealed 2000), authorized an award of money damages against the United

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[10] The reference to claims "which otherwise would be cognizable in the Court of Federal Claims" incorporates the Tucker Act, 28 U. S. C. § 1491. See *Mitchell II*, 463 U. S., at 212, n. 8; *Mitchell I*, 445 U. S. 535, 539 (1980). The Tucker Act grants the Court of Federal Claims "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U. S. C. § 1491(a)(1).

States for alleged mismanagement of forests located on lands allotted to tribal members. The GAA authorized the President of the United States to allot agricultural or grazing land to individual tribal members residing on a reservation, § 331, and provided that "the United States does and will hold the land thus allotted . . . in trust for the sole use and benefit of the Indian to whom such allotment shall have been made," § 348.

We held that the GAA did not create private rights enforceable in a suit for money damages under the Indian Tucker Act. After examining the GAA's language, history, and purpose, we concluded that it "created only a limited trust relationship between the United States and the allottee that does not impose any duty upon the Government to manage timber resources." *Mitchell I*, 445 U. S., at 542. In particular, we stressed that §§ 1 and 2 of the GAA removed a standard element of a trust relationship by making "the Indian allottee, and not a representative of the United States, . . . responsible for using the land for agricultural or grazing purposes." *Id.*, at 542–543; see *id.*, at 543 ("Under this scheme, . . . the allottee, and not the United States, was to manage the land."). We also determined that Congress decided to have "the United States 'hold the land . . . in trust' not because it wished the Government to control use of the land . . . , but simply because it wished to prevent alienation of the land and to ensure that allottees would be immune from state taxation." *Id.*, at 544. Because "the Act [did] not . . . authoriz[e], much less requir[e], the Government to manage timber resources for the benefit of Indian allottees," *id.*, at 545, we held that the GAA established no right to recover money damages for mismanagement of such resources. We left open, however, the possibility that other sources of law might support the plaintiffs' claims for damages. *Id.*, at 546, and n. 7.

In *Mitchell II*, we held that a network of other statutes and regulations did impose judicially enforceable fiduciary

duties upon the United States in its management of forested allotted lands. "In contrast to the bare trust created by the [GAA]," we observed, "the statutes and regulations now before us clearly give the Federal Government full responsibility to manage Indian resources and land for the benefit of the Indians." 463 U. S., at 224.

As to managing the forests and selling timber, we noted, Congress instructed the Secretary to be mindful of "the needs and best interests of the Indian owner and his heirs," 25 U. S. C. § 406(a), and specifically to take into account:

> "(1) the state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs, (2) the highest and best use of the land, including the advisability and practicality of devoting it to other uses for the benefit of the owner and his heirs, and (3) the present and future financial needs of the owner and his heirs." *Ibid.*

Proceeds from timber sales were to be paid to landowners "or disposed of for their benefit." *Ibid.* Congress' prescriptions, Interior Department regulations, and "daily supervision over the harvesting and management of tribal timber" by the Department's Bureau of Indian Affairs, we emphasized, combined to place under federal control "[v]irtually every stage of the process." *Mitchell II*, 463 U. S., at 222 (internal quotation marks omitted); see *id.*, at 222–224 (describing comprehensive timber management statutes and regulations promulgated thereunder).

Having determined that the statutes and regulations "establish[ed] fiduciary obligations of the Government in the management and operation of Indian lands and resources," we concluded that the relevant legislative and executive prescriptions could "fairly be interpreted as mandating compensation by the Federal Government for damages sustained." *Id.*, at 226. A damages remedy, we explained, would "furthe[r] the purposes of the statutes and regulations, which

clearly require that the Secretary manage Indian resources so as to generate proceeds for the Indians." *Id.*, at 226–227.

To state a claim cognizable under the Indian Tucker Act, *Mitchell I* and *Mitchell II* thus instruct, a Tribe must identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties. See 463 U. S., at 216–217, 219. If that threshold is passed, the court must then determine whether the relevant source of substantive law "can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties [the governing law] impose[s]." *Id.*, at 219. Although "the undisputed existence of a general trust relationship between the United States and the Indian people" can "reinforc[e]" the conclusion that the relevant statute or regulation imposes fiduciary duties, *id.*, at 225, that relationship alone is insufficient to support jurisdiction under the Indian Tucker Act. Instead, the analysis must train on specific rights-creating or duty-imposing statutory or regulatory prescriptions. Those prescriptions need not, however, expressly provide for money damages; the availability of such damages may be inferred. See *id.*, at 217, n. 16 ("[T]he substantive source of law may grant the claimant a right to recover damages either expressly or by implication." (internal quotation marks and citation omitted)).

C

We now consider whether the IMLA and its implementing regulations can fairly be interpreted as mandating compensation for the Government's alleged breach of trust in this case. We conclude that they cannot.

1

The Tribe's principal contention is that the IMLA's statutory and regulatory scheme, viewed in its entirety, attaches

fiduciary duties to each Government function under that scheme, and that the Secretary acted in contravention of those duties by approving the 12½ percent royalty contained in the amended Lease. See, *e. g.*, Brief for Respondent 20, 30–38. We read the IMLA differently. As we see it, the statute and regulations at issue do not provide the requisite "substantive law" that "mandat[es] compensation by the Federal Government." *Mitchell II*, 463 U. S., at 218.

The IMLA and its implementing regulations impose no obligations resembling the detailed fiduciary responsibilities that *Mitchell II* found adequate to support a claim for money damages.[11] The IMLA simply requires Secretarial approval before coal mining leases negotiated between Tribes and third parties become effective, 25 U. S. C. § 396a, and authorizes the Secretary generally to promulgate regulations governing mining operations, § 396d. Yet the dissent concludes that the IMLA imposes "one or more specific statutory obligations, as in *Mitchell II*, at the level of fiduciary duty whose breach is compensable in damages." *Post*, at 521. The endeavor to align this case with *Mitchell II* rather than *Mitchell I*, however valiant, falls short of the mark. Unlike the "elaborate" provisions before the Court in *Mitchell II*, 463 U. S., at 225, the IMLA and its regulations do not "give the Federal Government full responsibility to manage Indian resources . . . for the benefit of the Indians," *id.*, at 224. The Secretary is neither assigned a comprehensive managerial role nor, at the time relevant here, expressly invested with responsibility to secure "the needs and best interests of the

[11] We rule only on the Government's role in the coal leasing process under the IMLA. As earlier recounted, see *supra*, at 494, both the IMLA and its implementing regulations address oil and gas leases in considerably more detail than coal leases. Whether the Secretary has fiduciary or other obligations, enforceable in an action for money damages, with respect to oil and gas leases is not before us.

Indian owner and his heirs." *Ibid.* (internal quotation marks omitted) (quoting 25 U. S. C. § 406(a)).[12]

Instead, the Secretary's involvement in coal leasing under the IMLA more closely resembles the role provided for the Government by the GAA regarding allotted forest lands. See *Mitchell I*, 445 U. S., at 540–544. Although the GAA required the Government to hold allotted land "in trust for the sole use and benefit of the Indian to whom such allotment shall have been made," *id.*, at 541 (quoting 25 U. S. C. § 348), that Act did not "authoriz[e], much less requir[e], the Government to manage timber resources for the benefit of Indian allottees," *Mitchell I*, 445 U. S., at 545. Similarly here, the IMLA and its regulations do not assign to the Secretary managerial control over coal leasing. Nor do they even establish the "limited trust relationship," *id.*, at 542, existing under the GAA; no provision of the IMLA or its regulations contains *any* trust language with respect to coal leasing.

Moreover, as in *Mitchell I*, imposing fiduciary duties on the Government here would be out of line with one of the statute's principal purposes. The GAA was designed so that "the allottee, and not the United States, . . . [would] manage the land." *Id.*, at 543. Imposing upon the Government a fiduciary duty to oversee the management of allotted lands would not have served that purpose. So too here. The IMLA aims to enhance tribal self-determination by giving Tribes, not the Government, the lead role in negotiating mining leases with third parties. See *supra*, at 494. As the Court of Federal Claims recognized, "[t]he ideal of Indian self-determination is directly at odds with Secretarial control over leasing." 46 Fed. Cl., at 230.

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[12] Both the Tribe and the dissent refer to portions of 25 CFR pt. 211 that require administrative decisions affecting tribal mineral interests to be made in the best interests of the tribal mineral owner. See Brief for Respondent 27, 31; *post*, at 516–517. We note, however, that the referenced regulatory provisions were adopted more than a decade after the events at issue in this case. See 61 Fed. Reg. 35653 (1996).

The Tribe nevertheless argues that the actions of the Secretary targeted in this case violated discrete statutory and regulatory provisions whose breach is redressable in an action for damages. In this regard, the Tribe relies extensively on 25 U. S. C. § 399, see, *e. g.,* Brief for Respondent 22–23, 30–31, upon which the Court of Appeals placed considerable weight as well, see 263 F. 3d, at 1330–1331; *supra*, at 501. That provision, however, is not part of the IMLA and does not govern Lease 8580. Enacted almost 20 years before the IMLA, § 399 authorizes *the Secretary* to lease certain unallotted Indian lands for mining purposes on terms she sets, and does not provide for input from the Tribes concerned. See *supra*, at 494. In exercising that authority, the Secretary is authorized to "perform any and all acts . . . as may be necessary and proper for the protection of the interests of the Indians and for the purpose of carrying the provisions of this section into full force and effect." § 399. But that provision describes the Secretary's *leasing* authority under § 399; it does not bear on the Secretary's more limited *approval* role under the IMLA.

Similarly unavailing is the Tribe's reliance on the Indian Mineral Development Act of 1982 (IMDA), 25 U. S. C. § 2101 *et seq.* See Brief for Respondent 23–24, 30. The IMDA governs the Secretary's approval of agreements for the development of certain Indian mineral resources through exploration and like activities. It does not establish standards governing the Secretary's approval of mining *leases* negotiated by a Tribe and a third party. The Lease in this case, in short, falls outside the IMDA's domain. See Reply Brief 12–13.

Citing 25 U. S. C. § 396a, the IMLA's general prescription, see *supra*, at 493, the Tribe next asserts that the Secretary violated his "duty to review and approve any proposed coal lease with care to promote IMLA's basic purpose and the [Tribe's] best interests." Brief for Respondent 39. To sup-

port that assertion, the Tribe points to various Government reports identifying 20 percent as the appropriate royalty, see *id.*, at 5–7, 15, and to the Secretary's decision, made after receiving *ex parte* communications from Peabody, to withhold departmental action, see *id.*, at 9–10, 15.

In the circumstances presented, the Tribe maintains, the Secretary's eventual approval of the 12½ percent royalty violated his duties under § 396a in two ways. First, the Secretary's approval was "improvident," Tr. of Oral Arg. 48, because it allowed the Tribe's coal "to be conveyed for what [the Secretary] knew to be about half of its value," *id.*, at 49. Second, Secretary Hodel's intervention into the Lease adjustment process "skewed the bargaining" by depriving the Tribe of the 20 percent rate, rendering the Secretary's subsequent approval of the 12½ percent rate "unfair." *Id.*, at 50.

The Tribe's vigorously pressed arguments headlining § 396a fare no better than its arguments tied to § 399 and the IMDA; the § 396a arguments fail, for they assume substantive prescriptions not found in that provision.[13] As to the "improviden[ce]" of the Secretary's approval, the Tribe can point to no guides or standards circumscribing the Secretary's affirmation of coal mining leases negotiated between a Tribe and a private lessee. Regulations under the IMLA in effect in 1987 established a minimum royalty of ten cents per ton. See 25 CFR § 211.15(c) (1985). But the royalty contained in Lease 8580 well exceeded that regulatory floor.

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[13] The Lease itself authorized the Secretary to make "reasonable [royalty] adjustment[s]." App. 194. As noted above, however, see *supra*, at 501, n. 9, the Court of Federal Claims determined, and the Tribe does not here dispute, that the Secretary is not a signatory to the Lease and that the Lease is not contractually binding on him. See 46 Fed. Cl., at 234–236. We thus perceive no basis for infusing the Secretary's *approval* function under § 396a with substantive standards that might be derived from his *adjustment* authority under the Lease, and certainly no basis for concluding that an alleged "breach" of those standards is cognizable in an action for money damages under the Indian Tucker Act.

See *supra*, at 495–496.[14] At the time the Secretary approved the amended Lease, it bears repetition, 12½ percent was the rate the United States itself customarily received from leases to mine coal on federal lands. Similarly, the customary rate for coal leases on Indian lands issued or readjusted after 1976 did not exceed 12½ percent. See *supra*, at 498–499, n. 6.[15]

In sum, neither the IMLA nor any of its regulations establishes anything more than a bare minimum royalty. Hence, there is no textual basis for concluding that the Secretary's approval function includes a duty, enforceable in an action for money damages, to ensure a higher rate of return for the Tribe concerned. Similarly, no pertinent statutory or regulatory provision requires the Secretary, on pain of damages, to conduct an independent "economic analysis" of the reasonableness of the royalty to which a Tribe and third party have agreed. 263 F. 3d, at 1340 (concurring opinion below, finding such a duty).[16]

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[14] Because the Tribe does not contend that the amended Lease failed to meet the minimum royalty under the regulations then in effect, we need not decide whether the Secretary's approval of such a lease would trigger money damages. See Reply Brief 15 ("The Court may . . . assume for present purposes that a failure by the Secretary to ensure, prior to approving a proposed lease, that its terms (or amendments) comply with the regulation specifying the minimum royalty rate to which the parties may agree would support a claim under the Tucker Act.").

[15] Under 30 U. S. C. § 207(a), that customary rate was also a statutorily defined minimum for federal coal leases. See *supra*, at 498–499, n. 6. Section 207(a), which applies to federal lands in general, did not apply to leases of Indian lands until 1996, when 25 CFR § 211.43(a)(2) was promulgated. See Reply Brief 13–14. At the pre-1996 times relevant here, the sole specific provision governing Tribe-private lessee coal leases was the ten cents per ton minimum prescribed in 25 CFR § 211.15(c) (1985).

[16] Citing language from the legislative history, the dissent stresses that the IMLA aimed in part to "give the Indians the greatest return from their property," *post*, at 516 (quoting S. Rep. No. 985, 75th Cong., 1st Sess., 2 (1937)), and suggests that the Secretary's approval role encompasses an enforceable duty to further that objective, see *post*, at 517. We have cautioned against according "talismanic effect" to the Senate Report's "reference to 'the greatest return from [Indian] property,'" and have observed

The Tribe's second argument under § 396a concentrates on the "skew[ing]" effect of Secretary Hodel's 1985 intervention, *i. e.*, his direction to Deputy Assistant Secretary Fritz to withhold action on Peabody's appeal from the Area Director's decision setting a royalty rate of 20 percent. Tr. of Oral Arg. 50; see *supra*, at 497–498. The Secretary's actions, both in intervening in the administrative appeal process, and in approving the amended Lease, the Tribe urges, were not based upon an assessment of the merits of the royalty issue; instead, the Tribe maintains, they were attributable entirely to the undue influence Peabody exerted through *ex parte* communications with the Secretary. See Brief for Respondent 40–42. Underscoring that the Tribe had no knowledge of those communications or of Secretary Hodel's direction to Fritz, see *supra*, at 498, the Tribe asserts that its bargaining position was seriously compromised when it resumed negotiations with Peabody in 1985. See, *e. g.*, Tr. of

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that it "overstates" Congress' aim to attribute to the Legislature a purpose "to guarantee Indian tribes the maximum profit available." *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163, 179 (1989). Beyond doubt, the IMLA was designed "to provide Indian tribes with a profitable source of revenue." *Ibid.*, quoted *supra*, at 493. But Congress had as a concrete objective in that regard the removal of certain impediments that had applied particularly to mineral leases on Indian land. See *Cotton*, 490 U. S., at 179 ("Congress was . . . concerned . . . with matters such as the unavailability of extralateral mineral rights on Indian land."); S. Rep. No. 985, at 2 ("[O]n the public domain the discoverer of a mineral deposit gets extralateral rights and can follow the ore beyond the side lines indefinitely, while on the Indian lands under the act of June 30, 1919, he is limited to the confines of the survey markers not to exceed 600 feet by 1,500 feet in any one claim. The draft of the bill herewith would permit the obtaining of sufficient acreage to remove the necessity for extralateral rights with all its attending controversies."); H. R. Rep. No. 1872, 75th Cong., 3d Sess., 2 (1938) (same). That impediment-removing objective is discrete from the Secretary's lease approval role under the IMLA. Again, we find no solid basis in the IMLA, its regulations, or lofty statements in legislative history for a legally enforceable command that the Secretary disapprove Indian coal leases unless they survive "an independent market study," *post*, at 519, or satisfy some other extratextual criterion of tribal profitability.

Oral Arg. 50–52. The Secretary's ultimate approval of the 12½ percent royalty, the Tribe concludes, was thus an outcome fundamentally unfair to the Tribe.

Here again, as the Court of Federal Claims ultimately determined, see *supra*, at 501, the Tribe's assertions are not grounded in a specific statutory or regulatory provision that can fairly be interpreted as mandating money damages. Nothing in § 396a, the IMLA's basic provision, or in the IMLA's implementing regulations proscribed the *ex parte* communications in this case, which occurred during an administrative appeal process largely unconstrained by formal requirements. See 25 CFR § 2.20 (1985) (Commissioner may rely on "any information available to [him] . . . whether formally part of the record or not."); *supra*, at 496–497, n. 3. Either party could have effected a transfer of Peabody's appeal to the Board. See 25 CFR § 2.19(b) (1985); *supra*, at 496–497, n. 3. Exercise of that option would have triggered review of a more formal character, in which *ex parte* communications would have been prohibited. See 43 CFR § 4.27(b) (1985). But the Tribe did not elect to transfer the matter to the Board, and the regulatory proscription on *ex parte* contacts applicable in Board proceedings thus did not govern.

We note, moreover, that even if Deputy Assistant Secretary Fritz had rendered an opinion affirming the 20 percent royalty approved by the Area Director, it would have been open to the Secretary to set aside or modify his subordinate's decision. See *supra*, at 498, n. 4. As head of the Department of the Interior, the Secretary had "authority to review any decision of any employee or employees of the Department." 43 CFR § 4.5(a)(2) (1985); cf. *Michigan Citizens for Independent Press* v. *Thornburgh*, 868 F. 2d 1285 (CADC) (upholding Attorney General's approval, over the contrary conclusions of an administrative law judge and the Justice Department's Antitrust Division, of a joint operating agreement under the Newspaper Preservation Act), aff'd by an equally divided Court, 493 U. S. 38 (1989) *(per curiam)*. Ac-

cordingly, rejection of Peabody's appeal by the Deputy Assistant Secretary would not necessarily have yielded a higher royalty for the Tribe.

* * *

However one might appraise the Secretary's intervention in this case, we have no warrant from any relevant statute or regulation to conclude that his conduct implicated a duty enforceable in an action for damages under the Indian Tucker Act. The judgment of the United States Court of Appeals for the Federal Circuit is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE O'CONNOR join, dissenting.

The issue in this case is whether the Indian Mineral Leasing Act (IMLA) and its regulations imply a specific duty on the Secretary of the Interior's part, with a cause of action for damages in case of breach. The Court and I recognize that if IMLA indicates that a fiduciary duty was intended, it need not provide a damages remedy explicitly; once a statutory or regulatory provision is found to create a specific fiduciary obligation, the right to damages can be inferred from general trust principles, and amenability to suit under the Indian Tucker Act. See *United States* v. *White Mountain Apache Tribe*, *ante*, at 472–473; *United States* v. *Mitchell*, 463 U. S. 206, 226 (1983) *(Mitchell II)*. I part from the majority because I take the Secretary's obligation to approve mineral leases under 25 U. S. C. § 396a as raising a substantial fiduciary obligation to the Navajo Nation (Tribe), which has pleaded and shown enough to survive the Government's motion for summary judgment. I would affirm the judgment of the Federal Circuit.

IMLA requires the Secretary's approval for the effectiveness of any lease negotiated by the Tribe with a third party. § 396a; see also 25 CFR § 211.2 (1985). The Court accepts the Government's position, see Brief for United States 38, that the IMLA approval responsibility places no substantive obligation on the Secretary, save for a minimal duty to withhold assent from leases calling for less than the minimum royalty rate set by IMLA regulations, whatever that may be. *Ante*, at 511. Since that rate is merely a general standard, which may be a bargain rate when applied to extractable material of high quality, the obligation to demand it may not amount to much. The legislative history and purposes of IMLA, however, illuminated by the Secretary's historical role in reviewing conveyances of Indian lands, point to a fiduciary responsibility to make a more ambitious assessment of the best interest of the Tribe before signing off.

The protective purpose of the Secretary's approval power has appeared in our discussions of other statutes governing Indian lands over the years. In *Tiger* v. *Western Investment Co.*, 221 U. S. 286 (1911), for example, we upheld the constitutionality of the Act of Apr. 26, 1906, ch. 1876, § 22, 34 Stat. 145, which made alienation of certain allotted lands by citizen Indians "subject to the approval of the Secretary of the Interior." Although allotment and conferral of citizenship had given tribal members greater responsibility for their own interest, see, *e. g.*, *Choteau* v. *Burnet*, 283 U. S. 691, 694 (1931), we nevertheless understood that the requirement of prior approval was supposed to satisfy the National Government's trust responsibility to the Indians, *Tiger*, *supra*, at 310–311; accord, *Sunderland* v. *United States*, 266 U. S. 226, 233 (1924) (restraints on alienation of Indian property are enacted "in fulfillment of [Congress's] duty to protect the Indians"). Shortly after *Tiger*, in *Anicker* v. *Gunsburg*, 246 U. S. 110 (1918), we held that the Secretary's authority to approve leases of allotted lands under the Act of May 27,

1908, ch. 199, § 2, 35 Stat. 312, was "unquestionably . . . given to him for the protection of Indians against their own improvidence and the designs of those who would obtain their property for inadequate compensation." 246 U. S., at 119. The Secretary's approval power was understood to be a significant component of the Government's general trust responsibility. See Clinton, Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self-Government, 33 Stan. L. Rev. 979, 1002–1003 (1981); Chambers & Price, Regulating Sovereignty: Secretarial Discretion and the Leasing of Indian Lands, 26 Stan. L. Rev. 1061, 1061–1068 (1974).

Congress's decision in IMLA to give the Secretary an approval authority is well understood in terms of this background, for in the enactment of IMLA, Congress devised a scheme of divided responsibility reminiscent of the old allotment legislation. While it changed the prior law by transferring negotiating authority from the Government to the tribes, it hedged that augmentation of tribal authority in leaving the Secretary with certain powers of oversight, including the authority to approve or reject leases once the tribes negotiated them. 25 U. S. C. §§ 396a–g. The Secretary's signature was the final step in a scheme of "uniform leasing procedures designed to protect the Indians," *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 764 (1985), and imposed out of a concern that existing laws were not "adequate to give the Indians the greatest return from their property," S. Rep. No. 985, 75th Cong., 1st Sess., 2 (1937); H. R. Rep. No. 1872, 75th Cong., 3d Sess., 2 (1938). The "basic purpose" of the Secretary's powers under IMLA is thus to "maximize tribal revenues from reservation lands." *Kerr-McGee Corp.* v. *Navajo Tribe*, 471 U. S. 195, 200 (1985); see *Blackfeet Tribe*, *supra*, at 767, n. 5. Consistent with this aim, the Secretary's own IMLA regulations (now in effect) provide that administrative actions, including lease approvals, are to be taken "[i]n the best interest of the Indian mineral owner."

25 CFR § 211.3 (2002); see also § 211.1 (stating that the overarching purpose of IMLA regulations is to ensure that Indians' mineral resources "will be developed in a manner that maximizes their best economic interests").[1] Thus, viewed in light of IMLA's legislative history and the general trust relationship between the United States and the Indians, see *Mitchell II*, 463 U. S., at 224–225, § 396a supports the existence of a fiduciary responsibility to review mineral leases for substance to safeguard the Indians' interest.[2]

I do not mean to suggest that devising a specific standard of responsibility is any simple matter, for we cannot ignore the tension between IMLA's two objectives. If we thought solely in terms of the aim to ensure that negotiated leases "maximize tribal revenues," *Kerr-McGee*, *supra*, at 200, we would ignore the object of IMLA to provide greater tribal responsibility, against which the Secretary's oversight is act-

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[1] In addition, the Interior Department at all times relevant to this case had in place an internal policy providing that mineral leases would be approved only if "the terms and conditions of the lease are in the best interest of the Indian landowner." App. 2, 133–134.

[2] The majority seeks to distinguish *Mitchell II*, saying that the timber management statutes at issue there gave the Secretary a "comprehensive managerial role" and stated explicitly that timber sales had to be made in consideration of "'the needs and best interests of the Indian owner and his heirs.'" *Ante*, at 507–508. The comprehensiveness of the Secretary's role just described is what made *Mitchell II* an easy case. *Mitchell II* did not say, however, that fiduciary duties can only be found where the Government has "elaborate control." 463 U. S., at 225. Nor does *Mitchell II*'s reference to the statute's explicit "best interests" language foreclose the use of standard interpretive tools like legislative history to determine whether a statute establishes a fiduciary duty.

The majority proceeds to discount IMLA's legislative history, suggesting that Congress's concern for Indian revenues was limited to the elimination of certain constraints peculiar to Indian mineral leases. *Ante*, at 511–512, n. 16. But the cited IMLA legislative reports do not indicate that Congress's aims were restricted to curing these specific deficiencies of prior law, and they do nothing to detract from the consistent recognition in our precedents that IMLA's leasing procedures were designed to protect Indian interests in mineral resources.

ing as a hedge. See Royster, Mineral Development in Indian Country: The Evolution of Tribal Control Over Mineral Resources, 29 Tulsa L. Rev. 541, 558–580 (1994) (noting the twin aims of IMLA). The more stringent the substantive obligation of the Secretary, the less the scope of tribal responsibility. The Court, however, errs in the opposite direction, giving overriding weight to the interest of tribal autonomy to the point of concluding that the Secretary's approval obligation cannot be an onerous one, *ante*, at 508, thus losing sight of the mixture of congressional objectives. The standard of responsibility simply cannot give the whole hog to the one congressional policy or the other.

While this is not the case to essay any ultimate formulation of a balanced standard, even a reticent formulation of the fiduciary obligation would require the Secretary to withhold approval if he had good reason to doubt that the negotiated rate was within the range of reasonable market rates for the coal in question, or if he had reason to know that the Tribe had been placed under an unfair disadvantage at the negotiating table by his very own acts. See Restatement (Second) of Trusts §§ 170, 173, 174, 176 (1957). And those modest standards are enough to keep the present suit in court, for the Tribe has pleaded a breach of trust in each respect and has submitted evidence to get past summary judgment on either alternative.

The record discloses serious indications that the 12½ percent royalty rate in the lease amendments was substantially less than fair market value for the Tribe's high quality coal. In the course of deciding that 20 percent would be a reasonable adjustment under the terms of the lease, the Area Director of the Board of Indian Affairs (BIA) considered several independent economic studies, each one of them recommending rates around 20 percent, and one specifically rejecting 12½ percent as "inadequate." App. 6–7 (internal

quotation marks omitted).[3] These conclusions were confirmed by the expert from the BIA's Energy and Mineral Division, in a supplemental report submitted after Peabody appealed the Area Director's decision. That report not only endorsed the 20 percent rate, but expressly found that the royalty rate "should be much higher than the 12.5% that the Federal Government receives for surface-mined coal" because the Navajo coal is "extremely valuable." *Id.*, at 22. No federal study ever recommended a royalty rate under 20 percent, and yet the Secretary approved a rate little more than half that. *Id.*, at 134. When this case was before the Federal Circuit, Judge Schall took the sensible position that the Secretary was obligated to obtain an independent market study to assess the rate in these circumstances, see 263 F. 3d 1325, 1340 (2001) (opinion concurring in part and dissenting in part), and the record as it stands shows the Secretary to be clearly open to the claim of fiduciary breach for approving the rate on the information he is said to have had. Of course I recognize that the Secretary's obligation is to approve leases, not royalty rates in isolation, but an allegation that he approved an otherwise unjustified rate apparently well below market for the particular resource deposit certainly raises a claim of breach.

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[3] The United States Bureau of Mines recommended an adjusted royalty rate of 20 percent, while the BIA's Division of Energy and Mineral Resources recommended 24.44 percent in a separate report. Several private studies also endorsed rates in the 20 percent range: one, conducted by the Council of Energy Resource Tribes, concluded that the rate should be between 15 and 20 percent, and another, prepared by a private management consultant firm at the request of the Navajo, advocated a rate of between 17.08 and 22.77 percent. The only report with a significantly lower rate was the report submitted by Peabody, which recommended a rate of 5.57 to 7.16 percent. This figure was based not on current fair value but rather on what rate would "restore the benefits that were originally contemplated when the 1964 lease was signed by both parties." App. 16–18.

What is more, the Tribe has made a powerful showing that the Secretary knew perfectly well how his own intervention on behalf of Peabody had derailed the lease adjustment proceeding that would in all probability have yielded the 20 percent rate. After his *ex parte* meeting with Peabody's representatives, the Secretary put his name on the memorandum, drafted by Peabody, directing Deputy Assistant Secretary Fritz to withhold his decision affirming the 20 percent rate; directing him to mislead the Tribe by telling it that no decision on the merits of the adjustment was imminent, when in fact the affirmance had been prepared for Fritz's signature; and directing him to encourage the Tribe to shift its attention from the Area Director's appealed award of 20 percent and return to the negotiating table, where 20 percent was never even a possibility. App. 117–118. The purpose and predictable effect of these actions was to induce the Tribe to take a deep discount in the royalty rate in the face of what the Tribe feared would otherwise be prolonged revenue loss and uncertainty. The point of this evidence is not that the Secretary violated some rule of procedure for administrative appeals, *ante*, at 512–513, or some statutory duty regarding royalty adjustments under the terms of the earlier lease. What these facts support is the Tribe's claim that the Secretary defaulted on his fiduciary responsibility to withhold approval of an inadequate lease accepted by the Tribe while under a disadvantage the Secretary himself had intentionally imposed.[4]

[4] The possibility that the Secretary could have set aside Fritz's rejection of Peabody's appeal does not, despite the Court's suggestion, *ante*, at 513–514, defeat the Tribe's claim under § 396a. As an initial matter, whatever formal authority the Secretary may have had, nothing cited by the parties suggests that the Secretary was considering such action, which would have painted him plainly as catering to Peabody. Hence the cautious qualification in the memorandum to Fritz, emphasizing that his intervention was "not intended as a determination of the merits" of the 20 percent rate adjustment. App. 118. Given that the federal economic surveys unanimously endorsed 20 percent, it is unclear what basis the Secretary

All of this is not to say that the Tribe would end up with a recovery at the end of the day. Disputed facts have not been tried; the negotiations affected not only the 1964 lease that was subject to adjustment on demand, but also other leases apparently not subject to the same option for the Tribe's benefit; and the renegotiated terms affected lease provisions other than royalties (including tax terms). For all we can say now, the net of all these changes may have been an overall bargain in the Tribe's interest, despite the smaller royalty figure in the lease as approved. But the only issue here is whether the Tribe's claims address one or more specific statutory obligations, as in *Mitchell II*, at the level of fiduciary duty whose breach is compensable in damages. The Tribe has pleaded such duty, the record shows that the Tribe has a case to try, and I respectfully dissent.

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would have had to reject the rate on the merits. More importantly, the gravamen of the Tribe's claim is not that it is entitled to the 20 percent rate adjustment under the lease. Rather, it is that the Secretary's actions in deceiving the Tribe about the status of Peabody's appeal skewed the subsequent bargaining process, and the resulting royalty rate, in Peabody's favor. On that issue, whether the Secretary might have ultimately favored Peabody's appeal, while perhaps a subject of relevant evidence, is not dispositive.

Syllabus

CLAY *v.* UNITED STATES

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

No. 01–1500. Argued January 13, 2003—Decided March 4, 2003

Petitioner Clay was convicted of arson and a drug offense in Federal District Court. The Seventh Circuit affirmed his convictions on November 23, 1998, and that court's mandate issued on December 15, 1998. Clay did not file a petition for a writ of certiorari. The time in which he could have done so expired 90 days after entry of the Court of Appeals' judgment and 69 days after issuance of its mandate. One year and 69 days after the Court of Appeals issued its mandate, and exactly one year after the time for seeking certiorari expired, Clay filed a motion for postconviction relief under 28 U. S. C. § 2255. Such motions are subject to a one-year time limitation that generally runs from "the date on which the judgment of conviction becomes final." § 2255, ¶ 6(1). Relying on Circuit precedent, the District Court stated that when a federal prisoner does not seek certiorari, his judgment of conviction becomes final for § 2255 purposes upon issuance of the court of appeals' mandate. Because Clay filed his § 2255 motion more than one year after that date, the court denied it as time barred. The Seventh Circuit affirmed.

Held: For the purpose of starting the clock on § 2255's one-year limitation period, a judgment of conviction becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction. Pp. 527–532.

(a) Finality has a long-recognized, clear meaning in the postconviction relief context: Finality attaches in that setting when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires. See, *e. g.*, *Caspari* v. *Bohlen*, 510 U. S. 383, 390. Because the Court presumes "that Congress expects its statutes to be read in conformity with this Court's precedents," *United States* v. *Wells*, 519 U. S. 482, 495, the Court's unvarying understanding of finality for collateral review purposes would ordinarily determine the meaning of "becomes final" in § 2255. Pp. 527–528.

(b) Supporting the Seventh Circuit's judgment, the Court's invited *amicus curiae* urges a different determinant, relying on verbal differences between § 2255 and § 2244(d)(1), which governs petitions for federal habeas corpus by state prisoners. Where § 2255, ¶ 6(1), refers simply to "the date on which the judgment of conviction becomes final,"

§ 2244(d)(1)(A) speaks of "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." When "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. Invoking the maxim recited in *Russello*, *amicus* asserts that "becomes final" in § 2255, ¶ 6(1), cannot mean the same thing as "became final" in § 2244(d)(1)(A); reading the two as synonymous, *amicus* maintains, would render superfluous the words "by the conclusion of direct review or the expiration of the time for seeking such review"—words found only in the latter provision. If § 2255, ¶ 6(1), explicitly incorporated the first of § 2244(d)(1)(A)'s finality formulations, one might indeed question the soundness of interpreting § 2255 implicitly to incorporate § 2244(d)(1)(A)'s second trigger as well. As written, however, § 2255 leaves "becomes final" undefined. *Russello* hardly warrants a decision that would hold the § 2255 petitioner to a tighter time constraint than the petitioner governed by § 2244(d)(1)(A). An unqualified term, *Russello* indicates, calls for a reading surely no less broad than a pinpointed one. Moreover, one can readily comprehend why Congress might have found it appropriate to spell out the meaning of "final" in § 2244(d)(1)(A) but not in § 2255. Section 2244(d)(1) governs petitions by state prisoners. In that context, a bare reference to "became final" might have suggested that finality assessments should be made by reference to state-law rules. Those rules may differ from the general federal rule and vary from State to State. The qualifying words in § 2244(d)(1)(A) make it clear that finality is to be determined by reference to a uniform federal rule. Section 2255, however, governs only petitions by federal prisoners; within the federal system there is no comparable risk of varying rules to guard against. Pp. 528–531.

(c) Section 2263—which prescribes a limitation period for certain habeas petitions filed by death-sentenced state prisoners—does not alter the Court's reading of § 2255. First, *amicus'* reliance on § 2263 encounters essentially the same problem as does his reliance on § 2244(d)(1)(A): Section 2255, ¶ 6(1), refers to neither of the two events that § 2263(a) identifies as possible starting points for the limitation period—"affirmance of the conviction and sentence on direct review" and "the expiration of the time for seeking such review." Thus, reasoning by negative implication from § 2263 does not justify the conclusion that § 2255, ¶ 6(1)'s limitation period begins to run at one of those times rather than the other. Second, § 2263(a) ties the applicable limitation period to "affirmance of the conviction and sentence," while § 2255, ¶ 6(1), ties the limitation period to the date when "the judgment of conviction becomes

final." "The *Russello* presumption . . . grows weaker with each difference in the formulation of the provisions under inspection." *Columbus* v. *Ours Garage & Wrecker Service, Inc.*, 536 U. S. 424, 435–436. Pp. 531–532.

30 Fed. Appx. 607, reversed and remanded.

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

Thomas C. Goldstein, by appointment of the Court, 537 U. S. 808, argued the cause for petitioner. With him on the briefs was *Amy Howe.*

Matthew D. Roberts argued the cause for the United States. With him on the briefs were *Solicitor General Olson, Assistant Attorney General Chertoff,* and *Deputy Solicitor General Dreeben.*

David W. DeBruin, by invitation of the Court, 536 U. S. 974, argued the cause and filed a brief as *amicus curiae* in support of the judgment below. With him on the brief was *Elaine J. Goldenberg.*

JUSTICE GINSBURG delivered the opinion of the Court.

A motion by a federal prisoner for postconviction relief under 28 U. S. C. § 2255 is subject to a one-year time limitation that generally runs from "the date on which the judgment of conviction becomes final." § 2255, ¶ 6(1). This case concerns the starting date for the one-year limitation. It presents a narrow but recurring question on which courts of appeals have divided: When a defendant in a federal prosecution takes an unsuccessful direct appeal from a judgment of conviction, but does not next petition for a writ of certiorari from this Court, does the judgment become "final" for postconviction relief purposes (1) when the appellate court issues its mandate affirming the conviction, or, instead, (2) on the date, ordinarily 69 days later, when the time for filing a petition for certiorari expires?

In accord with this Court's consistent understanding of finality in the context of collateral review, and the weight of lower court authority, we reject the issuance of the appellate

court mandate as the triggering date. For the purpose of starting the clock on § 2255's one-year limitation period, we hold, a judgment of conviction becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction.

I

In 1997, petitioner Erick Cornell Clay was convicted of arson and distribution of cocaine base in the United States District Court for the Northern District of Indiana. On November 23, 1998, the Court of Appeals for the Seventh Circuit affirmed his convictions. That court's mandate issued on December 15, 1998. See Fed. Rules App. Proc. 40(a)(1) and 41(b) (when no petition for rehearing is filed, a court of appeals' mandate issues 21 days after entry of judgment). Clay did not file a petition for a writ of certiorari. The time in which he could have petitioned for certiorari expired on February 22, 1999, 90 days after entry of the Court of Appeals' judgment, see this Court's Rule 13(1), and 69 days after the issuance of the appellate court's mandate.

On February 22, 2000—one year and 69 days after the Court of Appeals issued its mandate and exactly one year after the time for seeking certiorari expired—Clay filed a motion in the District Court, pursuant to 28 U. S. C. § 2255, to vacate, set aside, or correct his sentence. Congress has prescribed "[a] 1-year period of limitation" for such motions "run[ning] from the latest of" four specified dates. § 2255, ¶ 6. Of the four dates, the only one relevant in this case, as in the generality of cases, is the first: "the date on which the judgment of conviction becomes final." § 2255, ¶ 6(1).

Relying on *Gendron* v. *United States*, 154 F. 3d 672, 674 (CA7 1998) *(per curiam)*, the District Court stated that "when a federal prisoner in this circuit does not seek certiorari . . . , the conviction becomes 'final' on the date the appellate court issues the mandate in the direct appeal." App. to Pet. for Cert. 8a. Because Clay filed his § 2255 mo-

tion more than one year after that date, the court denied the motion as time barred.

The Seventh Circuit affirmed. That court declined Clay's "invitation to reconsider our holding in *Gendron*," although it acknowledged that *Gendron*'s "construction of section 2255 represents the minority view." 30 Fed. Appx. 607, 609 (2002). "Bowing to *stare decisis*," the court expressed "reluctan[ce] to overrule [its own] recently-reaffirmed precedent without guidance from the Supreme Court." *Ibid.*

The Fourth Circuit has agreed with *Gendron*'s interpretation of § 2255. See *United States* v. *Torres*, 211 F. 3d 836, 838–842 (2000) (when a federal prisoner does not file a petition for certiorari, his judgment of conviction becomes final for § 2255 purposes upon issuance of the court of appeals' mandate). Six Courts of Appeals have parted ways with the Seventh and Fourth Circuits. These courts hold that, for federal prisoners like Clay who do not file petitions for certiorari following affirmance of their convictions, § 2255's one-year limitation period begins to run when the defendant's time for seeking review by this Court expires.[1] To secure uniformity in the application of § 2255's time constraint, we granted certiorari, 536 U. S. 957 (2002), and now reverse the Seventh Circuit's judgment.[2]

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[1] See *Derman* v. *United States*, 298 F. 3d 34, 39–42 (CA1 2002); *Kapral* v. *United States*, 166 F. 3d 565, 567–577 (CA3 1999); *United States* v. *Gamble*, 208 F. 3d 536, 537 (CA5 2000) *(per curiam); United States* v. *Garcia*, 210 F. 3d 1058, 1059–1061 (CA9 2000); *United States* v. *Burch*, 202 F. 3d 1274, 1275–1279 (CA10 2000); *Kaufmann* v. *United States*, 282 F. 3d 1336, 1337–1339 (CA11 2002).

[2] Agreeing with the position advanced by the majority of the courts of appeals that have ruled on the question, the United States joins petitioner Clay in urging that Clay's § 2255 motion was timely filed. We therefore invited David W. DeBruin to brief and argue this case, as *amicus curiae*, in support of the Seventh Circuit's judgment. Mr. DeBruin's able advocacy permits us to decide the case satisfied that the relevant issues have been fully aired.

II

Finality is variously defined; like many legal terms, its precise meaning depends on context. Typically, a federal judgment becomes final for appellate review and claim preclusion purposes when the district court disassociates itself from the case, leaving nothing to be done at the court of first instance save execution of the judgment. See, *e. g.*, *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 712 (1996); Restatement (Second) of Judgments § 13, Comment *b* (1980). For other purposes, finality attaches at a different stage. For example, for certain determinations under the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, and under a now-repealed version of Federal Rule of Criminal Procedure 33, several lower courts have held that finality attends issuance of the appellate court's mandate. See Brief for *Amicus Curiae* by Invitation of the Court 22–28 (hereinafter DeBruin Brief) (citing cases). For the purpose of seeking review by this Court, in contrast, "[t]he time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice)." This Court's Rule 13(3).

Here, the relevant context is postconviction relief, a context in which finality has a long-recognized, clear meaning: Finality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires. See, *e. g.*, *Caspari* v. *Bohlen*, 510 U. S. 383, 390 (1994); *Griffith* v. *Kentucky*, 479 U. S. 314, 321, n. 6 (1987); *Barefoot* v. *Estelle*, 463 U. S. 880, 887 (1983); *United States* v. *Johnson*, 457 U. S. 537, 542, n. 8 (1982); *Linkletter* v. *Walker*, 381 U. S. 618, 622, n. 5 (1965). Because "we presume that Congress expects its statutes to be read in conformity with this Court's precedents," *United States* v. *Wells*, 519 U. S. 482, 495 (1997), our unvarying understanding

of finality for collateral review purposes would ordinarily determine the meaning of "becomes final" in § 2255.

Amicus urges a different determinant, relying on verbal differences between § 2255 and a parallel statutory provision, 28 U. S. C. § 2244(d)(1), which governs petitions for federal habeas corpus by state prisoners. See DeBruin Brief 8–20. Sections 2255 and 2244(d)(1), as now formulated, were reshaped by the Antiterrorism and Effective Death Penalty Act of 1996. See §§ 101, 105, 110 Stat. 1217, 1220. Prior to that Act, no statute of limitations governed requests for federal habeas corpus or § 2255 habeas-like relief. See *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986); *United States* v. *Nahodil*, 36 F. 3d 323, 328 (CA3 1994). Like § 2255, § 2244(d)(1) establishes a one-year limitation period, running from the latest of four specified dates. Three of the four time triggers under § 2244(d)(1) closely track corresponding portions of § 2255. Compare §§ 2244(d)(1)(B)–(D) with § 2255, ¶¶ 6(2)–(4). But where § 2255, ¶ 6(1), refers simply to "the date on which the judgment of conviction becomes final," § 2244(d)(1)(A) speaks of "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review."[3]

When "Congress includes particular language in one section of a statute but omits it in another section of the same Act," we have recognized, "it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U. S.

[3] The Courts of Appeals have uniformly interpreted "direct review" in § 2244(d)(1)(A) to encompass review of a state conviction by this Court. See *Derman* v. *United States*, 298 F. 3d, at 40–41; *Williams* v. *Artuz*, 237 F. 3d 147, 151 (CA2 2001); *Kapral* v. *United States*, 166 F. 3d, at 575; *Hill* v. *Braxton*, 277 F. 3d 701, 704 (CA4 2002); *Ott* v. *Johnson*, 192 F. 3d 510, 513 (CA5 1999); *Bronaugh* v. *Ohio*, 235 F. 3d 280, 283 (CA6 2000); *Anderson* v. *Litscher*, 281 F. 3d 672, 674–675 (CA7 2002); *Smith* v. *Bowersox*, 159 F. 3d 345, 347–348 (CA8 1998); *Bowen* v. *Roe*, 188 F. 3d 1157, 1159 (CA9 1999); *Locke* v. *Saffle*, 237 F. 3d 1269, 1273 (CA10 2001); *Bond* v. *Moore*, 309 F. 3d 770, 774 (CA11 2002).

16, 23 (1983) (quoting *United States* v. *Wong Kim Bo*, 472 F. 2d 720, 722 (CA5 1972)). Invoking the maxim recited in *Russello*, *amicus* asserts that "becomes final" in § 2255, ¶ 6(1), cannot mean the same thing as "became final" in § 2244(d)(1)(A); reading the two as synonymous, *amicus* maintains, would render superfluous the words "by the conclusion of direct review or the expiration of the time for seeking such review"—words found only in the latter provision. DeBruin Brief 8–20. We can give effect to the discrete wording of the two prescriptions, *amicus* urges, if we adopt the following rule: When a convicted defendant does not seek certiorari on direct review, § 2255's limitation period starts to run on the date the court of appeals issues its mandate. *Id.*, at 36.[4]

Amicus would have a stronger argument if § 2255, ¶ 6(1), explicitly incorporated the first of § 2244(d)(1)(A)'s finality formulations but not the second, so that the § 2255 text read "becomes final *by the conclusion of direct review.*" Had § 2255 explicitly provided for the first of the two finality triggers set forth in § 2244(d)(1)(A), one might indeed question the soundness of interpreting § 2255 implicitly to incorporate § 2244(d)(1)(A)'s second trigger as well. As written, however, § 2255 does not qualify "becomes final" at all. Using neither of the disjunctive phrases that follow the words "became final" in § 2244(d)(1)(A), § 2255 simply leaves "becomes final" undefined.

Russello, we think it plain, hardly warrants the decision *amicus* urges, one that would hold the § 2255 petitioner to

[4] Although recognizing that "the question is not presented in this case," Tr. of Oral Arg. 27, *amicus* suggests that § 2255's limitation period starts to run upon issuance of the court of appeals' mandate even in cases in which the defendant does petition for certiorari. *Id.*, at 27–28, 36–38, 41–42. As *amicus* also recognizes, however, *id.*, at 41, courts of appeals "have uniformly concluded that, if a prisoner petitions for certiorari, the contested conviction becomes final when the Supreme Court either denies the writ or issues a decision on the merits," *United States* v. *Hicks*, 283 F. 3d 380, 387 (CADC 2002).

a tighter time constraint than the petitioner governed by § 2244(d)(1)(A). *Russello* concerned the meaning of a provision in the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. § 1961 *et seq.*, that directed forfeiture to the United States of "any interest [a convicted defendant] has acquired . . . in violation of [the Act]." § 1963(a)(1). The petitioner in *Russello* urged a narrow construction of the unqualified words "any interest . . . acquired." Rejecting that argument, we observed that a succeeding subsection, § 1963(a)(2), reached "any interest in . . . any enterprise" the defendant conducted in violation of RICO's proscriptions. (Internal quotation marks omitted.) At that point, we referred to the maxim invoked by *amicus*. See *supra*, at 528. The qualifying words "in . . . any enterprise" narrowed § 1963(a)(2), but in no way affected § 1963(a)(1). The comparison of the two subsections, we said, "fortified" the broad construction we approved for the unmodified words "any interest . . . acquired." *Russello*, 464 U. S., at 22–23 (internal quotation marks omitted); see *id.*, at 23 ("Had Congress intended to restrict § 1963(a)(1) to an interest in an enterprise, it presumably would have done so expressly as it did in the immediately following subsection (a)(2).").

Far from supporting the Seventh Circuit's constricted reading of § 2255, ¶ 6(1), *Russello*'s reasoning tends in Clay's favor. An unqualified term—here "becomes final"—*Russello* indicates, calls for a reading surely no less broad than a pinpointed one—here, § 2244(d)(1)(A)'s specification "became final by the conclusion of direct review or the expiration of the time for seeking such review."

Moreover, as Clay and the Government urge, see Brief for Petitioner 22; Reply Brief for United States 7–8, one can readily comprehend why Congress might have found it appropriate to spell out the meaning of "final" in § 2244(d)(1)(A) but not in § 2255. Section 2244(d)(1) governs petitions by state prisoners. In that context, a bare reference to "became final" might have suggested that finality assessments

should be made by reference to state-law rules that may differ from the general federal rule and vary from State to State. Cf. *Artuz* v. *Bennett*, 531 U. S. 4, 8 (2000) (an application for state postconviction relief is "*properly* filed" for purposes of 28 U. S. C. § 2244(d)(2) "when its delivery and acceptance are in compliance with the applicable [state] laws and rules governing filings"). The words "by the conclusion of direct review or the expiration of the time for seeking such review" make it clear that finality for the purpose of § 2244(d)(1)(A) is to be determined by reference to a uniform federal rule. Section 2255, however, governs only petitions by federal prisoners; within the federal system there is no comparable risk of varying rules to guard against.

Amicus also submits that 28 U. S. C. § 2263 "reinforces" the Seventh Circuit's understanding of § 2255. DeBruin Brief 20; accord, *Torres*, 211 F. 3d, at 840. Chapter 154 of Title 28 governs certain habeas petitions filed by death-sentenced state prisoners. Section 2263(a) prescribes a 180-day limitation period for such petitions running from "final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review." That period is tolled, however, "from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review." § 2263(b)(1).

We do not find in § 2263 cause to alter our reading of § 2255. First, *amicus*' reliance on § 2263 encounters essentially the same problem as does his reliance on § 2244(d)(1)(A): Section 2255, ¶ 6(1), refers to *neither* of the two events that § 2263(a) identifies as possible starting points for the limitation period—"affirmance of the conviction and sentence on direct review" and "the expiration of the time for seeking such review." Thus, reasoning by negative implication from § 2263

does not justify the conclusion that § 2255, ¶ 6(1)'s limitation period begins to run at one of those times rather than the other. Cf. *supra*, at 529–531. Second, § 2263(a) ties the applicable limitation period to "affirmance of the conviction and sentence," while § 2255, ¶ 6(1), ties the limitation period to the date when "the judgment of conviction becomes final." See *Torres*, 211 F. 3d, at 845 (Hamilton, J., dissenting). "The *Russello* presumption—that the presence of a phrase in one provision and its absence in another reveals Congress' design—grows weaker with each difference in the formulation of the provisions under inspection." *Columbus* v. *Ours Garage & Wrecker Service, Inc.*, 536 U. S. 424, 435–436 (2002).

* * *

We hold that, for federal criminal defendants who do not file a petition for certiorari with this Court on direct review, § 2255's one-year limitation period starts to run when the time for seeking such review expires. Under this rule, Clay's § 2255 petition was timely filed. The judgment of the United States Court of Appeals for the Seventh Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Reporter's Note

The next page is purposely numbered 801. The numbers between 532 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 7, 2002, THROUGH MARCH 3, 2003

OCTOBER 7, 2002

Appeals Dismissed

No. 01–1713. REPUBLICAN CAUCUS OF PENNSYLVANIA HOUSE OF REPRESENTATIVES *v.* VIETH ET AL. Appeal from D. C. M. D. Pa. dismissed for want of jurisdiction. Reported below: 188 F. Supp. 2d 532.

No. 01–1817. JUBELIRER, LIEUTENANT GOVERNOR OF PENNSYLVANIA, ET AL. *v.* VIETH ET AL.;
No. 01–1823. SCHWEIKER, GOVERNOR OF PENNSYLVANIA, ET AL. *v.* VIETH ET AL.;
No. 01–1873. VIETH ET AL. *v.* JUBELIRER, LIEUTENANT GOVERNOR OF PENNSYLVANIA, ET AL.; and
No. 02–135. JUBELIRER, LIEUTENANT GOVERNOR OF PENNSYLVANIA, ET AL. *v.* VIETH ET AL. Appeals from D. C. M. D. Pa. dismissed as moot. Reported below: Nos. 01–1817 and 01–1823, 195 F. Supp. 2d 672; Nos. 01–1873 and 02–135, 188 F. Supp. 2d 532.

Certiorari Granted—Vacated and Remanded

No. 01–1340. HOHN *v.* UNITED STATES. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed June 12, 2002. Reported below: 262 F. 3d 811.

No. 01–1693. WILLINGHAM *v.* LOUGHNAN ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hope* v. *Pelzer*, 536 U. S. 730 (2002). Reported below: 261 F. 3d 1178.

No. 01–1731. RAPIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ashcroft* v. *Free Speech Coalition*, 535 U. S. 234 (2002). Reported below: 31 Fed. Appx. 836.

No. 01–1787. SIMPLE TECHNOLOGY, INC. *v.* DENSE-PAC MICROSYSTEMS, INC. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U. S. 722 (2002). Reported below: 31 Fed. Appx. 636.

No. 01–1827. FACE, VIRGINIA COMMISSIONER OF FINANCIAL INSTITUTIONS, ET AL. *v.* NATIONAL HOME EQUITY MORTGAGE ASSN. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzaga Univ.* v. *Doe*, 536 U. S. 273 (2002). Reported below: 283 F. 3d 220.

No. 01–9286. VARNER *v.* ILLINOIS. Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kansas* v. *Crane*, 534 U. S. 407 (2002). Reported below: 198 Ill. 2d 78, 759 N. E. 2d 560.

No. 01–10469. SLANINA *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ashcroft* v. *Free Speech Coalition*, 535 U. S. 234 (2002). Reported below: 283 F. 3d 670.

No. 02–90. TALBERT FUEL SYSTEMS PATENTS CO. *v.* UNOCAL CORP. ET AL. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U. S. 722 (2002). Reported below: 275 F. 3d 1371.

No. 02–5014. HALL *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Atkins* v. *Virginia*, 536 U. S. 304 (2002). Reported below: 67 S. W. 3d 870.

No. 02–5164. TENNARD *v.* COCKRELL, 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 *Atkins* v. *Virginia*, 536 U. S. 304 (2002). Reported below: 284 F. 3d 591.

Certiorari Dismissed

No. 01–10793. BAGLEY *v.* BOARD OF DIRECTORS, FARMERS NATIONAL BANK, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 31 Fed. Appx. 152.

No. 02–5104. TAYLOR *v.* ROCKFORD POLICE DEPARTMENT ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 02–5204. MCDONALD *v.* SUMMERS, ATTORNEY GENERAL OF TENNESSEE, ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 28 Fed. Appx. 497.

Miscellaneous Orders

No. 02A146. DOPP ET AL. *v.* UNITED STATES. Application for injunction pending appeal to the United States Court of Appeals for the Tenth Circuit, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 02A289. FORRESTER *v.* NEW JERSEY DEMOCRATIC PARTY, INC., ET AL. Sup. Ct. N. J. Application for stay, presented to JUSTICE SOUTER, and by him referred to the Court, denied.

No. D–2300. IN RE DISBARMENT OF BOBROW. Disbarment entered. [For earlier order herein, see 535 U. S. 1032.]

No. D–2301. IN RE DISBARMENT OF LEO. Disbarment entered. [For earlier order herein, see 535 U. S. 1032.]

No. D–2306. IN RE DISBARMENT OF SCHAEFER. Motion for reconsideration of order of disbarment [536 U. S. 954] denied.

No. D–2311. IN RE DISBARMENT OF RICHARDS. Disbarment entered. [For earlier order herein, see 535 U. S. 1093.]

No. D–2314. IN RE DISBARMENT OF CHANCE. Disbarment entered. [For earlier order herein, see 535 U. S. 1093.]

No. D–2315. IN RE DISBARMENT OF REEKS. Disbarment entered. [For earlier order herein, see 536 U. S. 901.]

No. D–2316. IN RE DISBARMENT OF MARSHALL. Disbarment entered. [For earlier order herein, see 536 U. S. 901.]

No. D–2317. IN RE DISBARMENT OF RICHEY. Disbarment entered. [For earlier order herein, see 536 U. S. 901.]

No. D–2318. IN RE DISBARMENT OF HUGHES. Disbarment entered. [For earlier order herein, see 536 U. S. 902.]

No. D–2319. IN RE DISBARMENT OF BAGWELL. Disbarment entered. [For earlier order herein, see 536 U. S. 902.]

No. D–2320. IN RE DISBARMENT OF BELSKY. Disbarment entered. [For earlier order herein, see 536 U. S. 902.]

No. D–2321. IN RE DISBARMENT OF CARON. Disbarment entered. [For earlier order herein, see 536 U. S. 902.]

No. D–2322. IN RE DISBARMENT OF CASSIDY. Disbarment entered. [For earlier order herein, see 536 U. S. 902.]

No. D–2323. IN RE DISBARMENT OF SPITZER. Disbarment entered. [For earlier order herein, see 536 U. S. 902.]

No. D–2324. IN RE DISBARMENT OF WESTBY. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. D–2325. IN RE DISBARMENT OF HOVELL. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. D–2326. IN RE DISBARMENT OF BENJAMIN. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. D–2327. In re Disbarment of Reynolds. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. D–2328. In re Disbarment of Brandes. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. D–2329. In re Disbarment of Leonardo. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. D–2330. In re Disbarment of Zogby. Disbarment entered. [For earlier order herein, see 536 U. S. 937.]

No. 01M77. Spendlove *v.* Carey;
No. 01M79. Wynn *v.* United States;
No. 01M80. Schipke *v.* Surgitek, Inc., et al.;
No. 02M1. Harvey *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division;
No. 02M2. Abrams *v.* United States;
No. 02M4. Mobley *v.* Superior Court of California et al.;
No. 02M5. Pendleton *v.* Morrison;
No. 02M6. White *v.* Maloney, Commissioner, Massachusetts Department of Correction;
No. 02M7. Torres *v.* Lampert, Superintendent, Snake River Correctional Institution;
No. 02M8. Washington *v.* Valspar Industrial Coatings Group;
No. 02M10. Tolliver *v.* Greiner, Superintendent, Green Haven Correctional Facility;
No. 02M11. Reynolds et ux. *v.* AmSouth Bank;
No. 02M12. Metcalf *v.* Felec Services et al.;
No. 02M14. Sorkpor *v.* Computer Sciences Corp.;
No. 02M15. Parker *v.* United States;
No. 02M17. Catalano *v.* Commissioner of Internal Revenue;
No. 02M18. Pannell *v.* Angelone, Director, Virginia Department of Corrections;
No. 02M19. Bullins *v.* Booker, Superintendent, Mississippi State Penitentiary, et al.;
No. 02M20. Redus *v.* United States Postal Service; and
No. 02M21. Simmons *v.* Stubblefield, Superintendent, Missouri Eastern Correctional Center. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01M74. OREGON STEEL MILLS, INC. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 48, ET AL. Motion to direct the Clerk to file petition for writ of certiorari, *nunc pro tunc*, to September 14, 2001, denied.

No. 02M3. FRANCIS *v.* FLORIDA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 02M9. IN RE WOODRUFF. Motion to direct the Clerk to file petition for writ of habeas corpus not in compliance with the Rules of this Court denied.

No. 02M13. PIGNATIELLO *v.* UNITED STATES. Motion of petitioner for leave to file petition for writ of certiorari under seal denied without prejudice to filing a renewed motion together with a redacted petition for writ of certiorari within 30 days.

No. 02M16. SEALED APPELLANT 1 *v.* SEALED APPELLANTS 1–48. Motion for leave to file petition for writ of certiorari under seal denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $5,820.53 for the period January 1 through June 30, 2002, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 534 U. S. 971.]

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion of the Special Master for fees and disbursements granted, and the Special Master is awarded a total of $39,666.96 for the period November 1, 2001, through June 30, 2002, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 534 U. S. 1038.]

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–117. MINNESOTA *v.* MARTIN, GUARDIAN AD LITEM FOR HOFF. Sup. Ct. Minn. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 98–942. FIORE *v.* WHITE, WARDEN, ET AL., 531 U. S. 225. Motion of respondents for modification of assessment of costs granted.

No. 00–511. VERIZON COMMUNICATIONS INC. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 00–555. WORLDCOM, INC., ET AL. *v.* VERIZON COMMUNICATIONS INC. ET AL.;

No. 00–587. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL.;

No. 00–590. AT&T CORP. *v.* IOWA UTILITIES BOARD ET AL.; and

No. 00–602. GENERAL COMMUNICATIONS, INC. *v.* IOWA UTILITIES BOARD ET AL., 535 U. S. 467. Motion of the Solicitor General to retax costs granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 01–400. BELL, WARDEN *v.* CONE, 535 U. S. 685. Motion of respondent to compensate appointed counsel at revised statutory rate and to abolish Court imposed cap on attorney's fees in light of Attorney Compensation Statute amendments denied.

No. 01–729. SMITH ET AL. *v.* DOE ET AL. C. A. 9th Cir. [Certiorari granted *sub nom. Otte* v. *Doe*, 534 U. S. 1126.] Motion of Public Defender of New Jersey, as *amicus curiae*, for leave to lodge documents under seal with redacted copies for the public record denied. Motion of Citizens for Penal Reform, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 01–963. NORFOLK & WESTERN RAILWAY CO. *v.* AYERS ET AL. Cir. Ct. Kanawha County, W. Va. [Certiorari granted, 535 U. S. 969.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of the Solicitor General to permit David B. Salmons to present oral argument *pro hac vice* granted.

No. 01–7574. SATTAZAHN *v.* PENNSYLVANIA. Sup. Ct. Pa. [Certiorari granted, 535 U. S. 926.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of the Solicitor General to permit Sri Srinivasan to present oral argument *pro hac vice* granted.

No. 01–1015. MOSELEY ET AL., DBA VICTOR'S LITTLE SECRET *v.* V SECRET CATALOGUE, INC., ET AL. C. A. 6th Cir. [Certiorari granted, 535 U. S. 985.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1118. SCHEIDLER ET AL. *v.* NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.; and

No. 01–1119. OPERATION RESCUE *v.* NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 535 U. S. 1016.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1420. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES ET AL. *v.* GUARDIANSHIP ESTATE OF KEFFELER ET AL. Sup. Ct. Wash. [Certiorari granted, 535 U. S. 1094.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1107. VIRGINIA *v.* BLACK ET AL. Sup. Ct. Va. [Certiorari granted, 535 U. S. 1094.] Motion of respondents Barry E. Black, Richard J. Elliott, and Jonathan O'Mara for divided argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1229. PIERCE COUNTY, WASHINGTON *v.* GUILLEN, LEGAL GUARDIAN OF GUILLEN ET AL., MINORS, ET AL. Sup. Ct. Wash. [Certiorari granted, 535 U. S. 1033.] Motion of the Solicitor General for divided argument granted.

No. 01–1368. NEVADA DEPARTMENT OF HUMAN RESOURCES ET AL. *v.* HIBBS ET AL. C. A. 9th Cir. [Certiorari granted, 536 U. S. 938.] Motion of Coalition for Local Sovereignty for leave to file a brief as *amicus curiae* granted.

No. 01–1375. UNITED STATES *v.* NAVAJO NATION. C. A. Fed. Cir. [Certiorari granted, 535 U. S. 1111.] Motion of Peabody Coal Co. et al. for leave to file a brief as *amici curiae* granted. Motion of respondent Navajo Nation to strike *amicus curiae* Peabody Coal Co.'s lodging granted.

No. 01–1500. CLAY *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 536 U. S. 957 and 981.] Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Motion for appointment of counsel granted, and it is ordered that Thomas C. Goldstein, Esq., of Washington, D. C., be appointed to

serve as counsel for petitioner in this case. Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 01–1710. EMPIRE BLUE CROSS AND BLUE SHIELD *v.* BYRNES ET AL.; and EMPIRE BLUE CROSS AND BLUE SHIELD *v.* ALICEA ET AL. C. A. 2d Cir. Motion of American Association of Health Plans, Inc., et al. for leave to file a brief as *amici curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 01–6978. EWING *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. [Certiorari granted, 535 U. S. 969.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of petitioner to strike respondent's lodging of lower court material denied.

No. 01–7785. LAWSON *v.* MISSISSIPPI ET AL. Ct. App. Miss. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [535 U. S. 953] denied.

No. 01–8793. GIBBS *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [535 U. S. 1015] denied.

No. 01–9451. MULAZIM *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [535 U. S. 1110] denied.

No. 01–9828. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [536 U. S. 936] denied.

No. 01–10179. IN RE HOLLINGSWORTH. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [536 U. S. 903] denied.

No. 01–9094. ABDUR'RAHMAN *v.* BELL, WARDEN. C. A. 6th Cir. [Certiorari granted, 535 U. S. 1016.] Motion for appointment of counsel granted, and it is ordered that Thomas C. Goldstein, Esq., of Washington, D. C., be appointed to serve as counsel for petitioner in this case.

No. 01–10279. KOSTH *v.* UNITED STATES. C. A. 7th Cir.;
No. 01–10303. MOZLEY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir.;
No. 01–10595. HOPPER *v.* MACMAHON. Sup. Ct. Va.;
No. 01–11015. EVANS *v.* CITY OF KINGSVILLE, TEXAS. C. A. 5th Cir.;
No. 01–11029. GOBBI *v.* BANK OF NEW YORK ET AL. C. A. 4th Cir.;
No. 02–5218. STURDZA *v.* UNITED ARAB EMIRATES ET AL. C. A. D. C. Cir.;
No. 02–5228. NEWSOME *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 5th Cir.;
No. 02–5307. IN RE PATTERSON-BEGGS;
No. 02–5888. BUNCH *v.* WHITE, SECRETARY OF THE ARMY. C. A. 4th Cir.;
No. 02–5960. SYME *v.* UNITED STATES. C. A. 3d Cir.;
No. 02–6122. RICHARDS *v.* UNITED STATES. C. A. 9th Cir.; and
No. 02–6207. IN RE PATTERSON-BEGGS. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 28, 2002, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 02–1. PHILLIPS, CHIEF JUSTICE, SUPREME COURT OF TEXAS, ET AL. *v.* WASHINGTON LEGAL FOUNDATION ET AL. C. A. 5th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 01–1847. IN RE RETTIG. C. A. 6th Cir. Petition for writ of common-law certiorari denied.

No. 01–10683. IN RE HAYES;
No. 01–10729. IN RE DUNNIGAN;
No. 01–10903. IN RE BINGHAM;
No. 01–10967. IN RE RIMMER-BEY;
No. 01–10973. IN RE CARTER;
No. 01–11002. IN RE HERROLD;
No. 02–222. IN RE RIVERA;
No. 02–5061. IN RE MULE;
No. 02–5096. IN RE WILLIAMS;
No. 02–5220. IN RE CARTER;
No. 02–5405. IN RE THOMAS;

No. 02–5412. IN RE WOJNICZ;
No. 02–5419. IN RE HUMPHREY;
No. 02–5473. IN RE UPSHER;
No. 02–5518. IN RE JOHNSON;
No. 02–5559. IN RE NATHAN;
No. 02–5563. IN RE LEWIS;
No. 02–5632. IN RE POWELL;
No. 02–5749. IN RE BOWELL;
No. 02–5750. IN RE BUCHANAN;
No. 02–5829. IN RE BALDWIN;
No. 02–5895. IN RE FERNANDO LATORRE; and
No. 02–6043. IN RE KHALIL. Petitions for writs of habeas corpus denied.

No. 02–5392. IN RE SEUFERT. Petition for writ of habeas corpus denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–5549. IN RE PELLEGRINO. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 01–10417. IN RE N'JAI;
No. 01–10561. IN RE LEWIS;
No. 01–10671. IN RE HUFFINE;
No. 01–10830. IN RE SINGH;
No. 01–10876. IN RE HARRIS;
No. 01–10884. IN RE TAPIA;
No. 01–10966. IN RE DEADMON;
No. 02–5097. IN RE WILLIAMS;
No. 02–5619. IN RE GREGORY;
No. 02–5688. IN RE GRUBER;
No. 02–5844. IN RE COLE; and
No. 02–6079. IN RE JOHNSON. Petitions for writs of mandamus denied.

No. 01–10367. IN RE MASON;
No. 02–104. IN RE PERRY;
No. 02–5222. IN RE DOOSE; and
No. 02–6091. IN RE WARREN. Petitions for writs of mandamus and/or prohibition denied.

No. 02–5052. IN RE GUNNELL. Petition for writ of prohibition denied.

Certiorari Denied. (See also No. 01–1847, *supra.*)

No. 00–1553. VAN POYCK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–1328. REPUBLICAN NATIONAL COMMITTEE *v.* PRITT; and

No. 01–1331. NATIONAL REPUBLICAN SENATORIAL COMMITTEE ET AL. *v.* PRITT. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 210 W. Va. 446, 557 S. E. 2d 853.

No. 01–1374. MORRELL, INDIVIDUALLY AND AS NEXT FRIEND FOR MORRELL, AN INFANT *v.* MOCK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 270 F. 3d 1090.

No. 01–1469. HEARTLAND BY-PRODUCTS, INC. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 264 F. 3d 1126.

No. 01–1490. WESTMORELAND COAL CO. *v.* RAMSEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 173.

No. 01–1495. JORDAN HOSPITAL, INC. *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 276 F. 3d 72.

No. 01–1501. DAVIS, GOVERNOR OF CALIFORNIA, ET AL. *v.* ARMSTRONG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 275 F. 3d 849.

No. 01–1502. ELIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 F. 3d 1003.

No. 01–1503. COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY, DOMESTIC RELATIONS DIVISION *v.* POPOVICH ET AL.; and

No. 01–1517. POPOVICH *v.* COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY, DOMESTIC RELATIONS DIVISION. C. A. 6th Cir. Certiorari denied. Reported below: 276 F. 3d 808.

No. 01–1506. RIPPY, BY NEXT FRIENDS, RIPPY ET UX. *v.* HATTAWAY, COMMISSIONER, TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 270 F. 3d 416.

No. 01–1519. ADAMS ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–1534. KORNWOLF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 276 F. 3d 1014.

No. 01–1536. BOSWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 572.

No. 01–1545. PUERTO RICO ET AL. *v.* ARECIBO COMMUNITY HEALTH CARE, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 270 F. 3d 17.

No. 01–1548. SHELBY COUNTY SCHOOL DISTRICT ET AL. *v.* COCKREL. C. A. 6th Cir. Certiorari denied. Reported below: 270 F. 3d 1036.

No. 01–1567. HILL *v.* FORT BEND INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 42.

No. 01–1569. INTERNATIONAL LONGSHOREMAN'S ASSN., LOCAL 1922 *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 930.

No. 01–1573. OAKLEY *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 245 Wis. 2d 447, 629 N. W. 2d 200, and 248 Wis. 2d 654, 635 N. W. 2d 760.

No. 01–1584. NATIONSBANK OF TEXAS, N. A. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 269 F. 3d 1332.

No. 01–1585. MOUSSAZADEH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 64 S. W. 3d 404.

No. 01–1618. ABBELL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 F. 3d 1286.

No. 01–1622. NATIONAL COALITION TO SAVE OUR MALL ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 269 F. 3d 1092.

No. 01–1624. CITY OF MIDDLETOWN ET AL. *v.* REGIONAL ECONOMIC COMMUNITY ACTION PROGRAM, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 294 F. 3d 35.

No. 01–1626. RAFIDAIN BANK *v.* FIRST CITY, TEXAS-HOUSTON, N. A. C. A. 2d Cir. Certiorari denied. Reported below: 281 F. 3d 48.

No. 01–1627. JEWELL *v.* COX ENTERPRISES, INC., ET AL. Ct. App. Ga. Certiorari denied. Reported below: 251 Ga. App. 808, 555 S. E. 2d 175.

No. 01–1634. STEIN *v.* ROBISON ET AL. Ct. App. Wash. Certiorari denied. Reported below: 107 Wash. App. 1022.

No. 01–1635. GREENLESS *v.* ALMOND, GOVERNOR OF RHODE ISLAND, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 277 F. 3d 601.

No. 01–1636. GEOSOUTHERN ENERGY CORP. ET AL. *v.* CHESAPEAKE OPERATING INC. C. A. 5th Cir. Certiorari denied. Reported below: 274 F. 3d 1017.

No. 01–1640. SHASTA COUNTY ET AL. *v.* BREWSTER. C. A. 9th Cir. Certiorari denied. Reported below: 275 F. 3d 803.

No. 01–1641. RIVERA-GALARZA *v.* COLON-LABOY. Sup. Ct. P. R. Certiorari denied.

No. 01–1642. AZTECA ENTERPRISES, INC. *v.* DALLAS AREA RAPID TRANSIT. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 839.

No. 01–1643. GOLDBLATT *v.* A & W INDUSTRIES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 47.

No. 01–1644. HUNT *v.* REGISTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–1647. VULCAN ENGINEERING CO., INC. *v.* FATA ALUMINUM, INC., ET AL.; and

No. 01–1791. FATA ALUMINUM, INC., ET AL. *v.* VULCAN ENGINEERING CO., INC. C. A. Fed. Cir. Certiorari denied. Reported below: 278 F. 3d 1366.

No. 01–1651. SAVE PALISADE FRUITLANDS ET AL. *v.* TODD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 279 F. 3d 1204.

No. 01–1652. SOUTH AUSTIN COALITION COMMUNITY COUNCIL ET AL. *v.* SBC COMMUNICATIONS INC. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 274 F. 3d 1168.

No. 01–1655. TARDIFF *v.* CALIFORNIA DEPARTMENT OF HEALTH SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 690.

No. 01–1656. DAVIS *v.* MAGEE ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 140 Md. App. 635, 782 A. 2d 351.

No. 01–1657. CRENSHAW *v.* HODGSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 619.

No. 01–1659. DEVINE ET AL. *v.* INDIAN RIVER COUNTY SCHOOL BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 249 F. 3d 1289.

No. 01–1660. SANDERS *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 76 Ark. App. 104, 61 S. W. 3d 871.

No. 01–1661. GORY *v.* DELAWARE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 31.

No. 01–1662. GRID RADIO ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 278 F. 3d 1314.

No. 01–1663. FESSLER *v.* COLLINS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 275 F. 3d 34.

No. 01–1664. DOE ET AL. *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 338.

No. 01–1665. COHEN, EXECUTOR OF THE ESTATE OF GINSBURG *v.* PAINEWEBBER, INC. C. A. 6th Cir. Certiorari denied. Reported below: 276 F. 3d 197.

No. 01–1667. VANCE *v.* UNION PLANTERS BANK, N. A. C. A. 5th Cir. Certiorari denied. Reported below: 279 F. 3d 295.

No. 01–1670. NEW JERSEY TRANSIT RAIL OPERATION, INC. *v.* NAST. Super. Ct. Pa. Certiorari denied. Reported below: 782 A. 2d 1066.

No. 01–1671. YSLETA DEL SUR PUEBLO ET AL. *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 835.

No. 01–1672. BIEGELEISEN *v.* CITY OF ITHACA ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 01–1674. GOLDEN RAINBOW FREEDOM FUND *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 698.

No. 01–1676. ROEBLING LIQUORS, INC., ET AL. *v.* COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 284 App. Div. 2d 669, 728 N. Y. S. 2d 509.

No. 01–1677. SPAULDING ET AL. *v.* UNITED TRANSPORTATION UNION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 279 F. 3d 901.

No. 01–1678. RAYBURN *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 22 Fed. Appx. 1.

No. 01–1681. CITY OF NEW YORK ET AL. *v.* WALSH. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 662.

No. 01–1682. LIGHTNING OIL CO., LTD. *v.* HESS ENERGY, INC. C. A. 4th Cir. Certiorari denied. Reported below: 276 F. 3d 646.

No. 01–1683. BULLOCK *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–1684. MENDONCA *v.* MEDEIROS ET AL. C. A. 1st Cir. Certiorari denied.

No. 01–1686. CLASS FIVE NEVADA CLAIMANTS *v.* DOW CORNING CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 280 F. 3d 648.

No. 01–1688. FRIDAY ET UX. *v.* WHITTLE AND ROPER REAL ESTATE FIRM ET AL. Sup. Ct. Va. Certiorari denied.

No. 01–1689. GALLOWAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–1690. HILL *v.* AMERICAN MEDICAL ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 427.

No. 01–1691. MONTES *v.* CITY OF HOUSTON. Sup. Ct. Tex. Certiorari denied. Reported below: 66 S. W. 3d 267.

No. 01–1692. MIDWEST GAS USERS' ASSN. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–1694. CAMP *v.* BRANCH BANKING & TRUST COMPANY OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 233.

No. 01–1696. NISHIOKA *v.* UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 836.

No. 01–1697. MENON *v.* FRINTON. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 735.

No. 01–1698. MCCRARY *v.* COMSTOCK. C. A. 6th Cir. Certiorari denied. Reported below: 273 F. 3d 693.

No. 01–1699. WARREN *v.* MORRIS CERULLO WORLD EVANGELISM ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–1702. ALMANZAR *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied. Reported below: 281 F. 3d 300.

No. 01–1703. RAMAPOUGH MOUNTAIN INDIANS ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 25 Fed. Appx. 2.

No. 01–1704. REGENCY OUTDOOR ADVERTISING, INC. *v.* CITY OF LOS ANGELES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 831.

No. 01–1705. LINVILLE *v.* CLAY COUNTY SHERIFF'S OFFICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1380.

No. 01–1706. OVERY *v.* MURPHY ET VIR. Ct. Civ. App. Ala. Certiorari denied. Reported below: 827 So. 2d 804.

No. 01–1707. ASHTON ET AL. *v.* CITY OF MEMPHIS. C. A. 6th Cir. Certiorari denied. Reported below: 281 F. 3d 516.

No. 01–1709. AFC COAL PROPERTIES, INC. *v.* DELTA MINE HOLDING CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 280 F. 3d 815.

No. 01–1712. SARDONELL ET VIR *v.* NORIEGA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 202.

No. 01–1715. NORMAN ET AL. *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 145 Wash. 2d 578, 40 P. 3d 1161.

No. 01–1716. PACIFICARE BEHAVIORAL HEALTH OF CALIFORNIA, INC., ET AL. *v.* SMITH. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 93 Cal. App. 4th 139, 113 Cal. Rptr. 2d 140.

No. 01–1717. THOMPSON *v.* ALCOA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 276 F. 3d 651.

No. 01–1718. DONLON *v.* CITY OF OXNARD. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 741.

No. 01–1719. STAR SCIENTIFIC, INC. *v.* KILGORE, ATTORNEY GENERAL OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 278 F. 3d 339.

No. 01–1721. ROLEN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 273 F. 3d 1189.

No. 01–1723. BECKER ET AL. *v.* MACK TRUCKS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 372.

No. 01–1725. GALLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 542.

No. 01–1726. MOORE *v.* TRAVIS PRUITT & ASSOCIATES, P. C. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 398.

No. 01–1728. ELLETT BROTHERS, INC. *v.* UNITED STATES FIDELITY & GUARANTY CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 275 F. 3d 384.

No. 01–1729. COUGHLIN ET UX. *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 837 So. 2d 326.

No. 01–1730. SINATRA *v.* KEENAN. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 413, 40 P. 3d 718.

No. 01–1732. BANK ONE, N. A. *v.* SHUMAKE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 281 F. 3d 507.

No. 01–1733. GILDER ET AL. *v.* MOORE, DBA WOODVILLE INN CO. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 01–1735. EASTON ET UX., AS SUCCESSORS IN INTEREST OF DECEDENT WINCHESTER *v.* MAREADY, SHERIFF, DEL NORTE COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–1736. PANARELLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 277 F. 3d 678.

No. 01–1738. COX CABLE ADVISORY COUNCIL *v.* CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 259 Conn. 56, 788 A. 2d 29.

No. 01–1739. BURRIER *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (CALIFORNIA ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–1740. AMERICAN MOTORISTS INSURANCE CO. *v.* GTE CORP. C. A. 2d Cir. Certiorari denied. Reported below: 30 Fed. Appx. 15.

No. 01–1741. MARELLO *v.* CENTRAL RESERVE LIFE INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 219.

No. 01–1742. KLEIN *v.* LONG ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 275 F. 3d 544.

No. 01–1743. BATTLE *v.* LANDMARK COMMUNICATIONS, INC., ET AL. Sup. Ct. Va. Certiorari denied.

No. 01–1745. GOODIN *v.* CITY OF JACKSONVILLE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 936.

No. 01–1746. BUSH & BURCHETT, INC., ET AL. *v.* RUSSELL ET UX. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 210 W. Va. 699, 559 S. E. 2d 36.

No. 01–1748. WOOTEN *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 250 Ga. App. 686, 552 S. E. 2d 878.

No. 01–1749. MARKOWSKI ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 274 F. 3d 525.

No. 01–1753. BENNINGTON *v.* CATERPILLAR, INC. C. A. 7th Cir. Certiorari denied. Reported below: 275 F. 3d 654.

No. 01–1754. FOX *v.* COYLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 271 F. 3d 658.

No. 01–1756. SWINDELL *v.* FLORIDA EAST COAST RAILWAY CO. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 935.

No. 01–1758. HILT-DYSON *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 456.

No. 01–1759. PICCIOTTO *v.* SIKORA, ASSOCIATE JUSTICE, SUPERIOR COURT, SUFFOLK COUNTY SUPERIOR COURT. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 436 Mass. 1001, 763 N. E. 2d 53.

No. 01–1760. MENDONCA *v.* WINTERSEN. C. A. 1st Cir. Certiorari denied.

No. 01–1761. COOPER TIRE & RUBBER CO. *v.* TUCKIER. Sup. Ct. Miss. Certiorari denied. Reported below: 826 So. 2d 679.

No. 01–1762. DAWAVENDEWA *v.* SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 276 F. 3d 1150.

No. 01–1763. CALIFORNIA INTERSCHOLASTIC FEDERATION ET AL. *v.* BARRIOS. C. A. 9th Cir. Certiorari denied. Reported below: 277 F. 3d 1128.

No. 01–1764. DAVIDSON *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 76 Ark. App. 464, 68 S. W. 3d 331.

No. 01–1767. BAKER ET UX. *v.* POWELL MOUNTAIN COAL CO. Sup. Ct. Va. Certiorari denied.

No. 01–1768. ANSARI *v.* DIAMOND PATH HOMEOWNERS' ASSN. ET AL. Ct. App. Minn. Certiorari denied.

No. 01–1770. HEMPHILL *v.* MCNEIL-PPC, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 25 Fed. Appx. 915.

No. 01–1771. JUST *v.* MULLEN. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 288 App. Div. 2d 476, 733 N. Y. S. 2d 678.

No. 01–1772. KEN ROBERTS CO. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 276 F. 3d 583.

No. 01–1775. SMITH *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 281 F. 3d 1384.

No. 01–1776. SWAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 315.

No. 01–1778. MCBRYDE, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS *v.* COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 264 F. 3d 52.

No. 01–1780. KEELER *v.* ACADEMY OF AMERICAN FRANCISCAN HISTORY, INC. Ct. Sp. App. Md. Certiorari denied. Reported below: 141 Md. App. 744.

No. 01–1783. DEVITO ET AL. *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 287 App. Div. 2d 265, 731 N. Y. S. 2d 5.

No. 01–1784. GREEN *v.* BENDEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 281 F. 3d 661.

No. 01–1785. HARTIG *v.* MCKEEN ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–1786. SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS, DBA SAULT STE. MARIE TRIBE ECONOMIC DEVELOPMENT COMMISSION *v.* YOUNG. Ct. App. Mich. Certiorari denied.

No. 01–1788. DORSETT *v.* LOUISIANA TECH UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 704.

No. 01–1789. PENNSYLVANIA PHARMACISTS ASSN. ET AL. *v.* HOUSTOUN, SECRETARY, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. C. A. 3d Cir. Certiorari denied. Reported below: 283 F. 3d 531.

No. 01–1792. ANTICO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 275 F. 3d 245.

No. 01–1794. MELENDREZ *v.* SEIB ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 128.

No. 01–1795. BURNETT *v.* ALABAMA NATIONAL GUARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1377.

No. 01–1796. BASE METAL TRADING, LTD. *v.* OJSC "NOVOKUZNETSKY ALUMINUM FACTORY" ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 F. 3d 208.

No. 01–1797. LEAL, EXECUTOR OF THE ESTATE OF LEAL *v.* SUN EXPLORATION & PRODUCTION CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 87.

No. 01–1799. CENTRAL PINES LAND CO. ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 274 F. 3d 881.

No. 01–1800. CHURCHILL COUNTY, NEVADA, ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 276 F. 3d 1060 and 282 F. 3d 1055.

No. 01–1801. ISRAEL ET AL., DBA ISRAEL AND QUINTON FARMS *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 521.

No. 01–1802. ASHKAR *v.* VON ESCHENBACH. C. A. 2d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 15.

No. 01–1803. REYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 283 F. 3d 446.

No. 01–1804. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 288 F. 3d 359.

No. 01–1805. A. G. G. ENTERPRISES, INC. *v.* WASHINGTON COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 281 F. 3d 1324.

No. 01–1807. GOOD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–1808. SAWYER *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 147 N. H. 191, 784 A. 2d 1208.

No. 01–1809. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 669.

No. 01–1810. JOHNSON *v.* LAWSON & LAWSON TOWING CO., INC. C. A. 5th Cir. Certiorari denied.

No. 01–1811. JANSEN ET AL. *v.* U. S. BANK NATIONAL ASSN., ND, FKA FIRST BANK OF SOUTH DAKOTA, N. A., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 291 F. 3d 1035.

No. 01–1812. KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–1813. MANKARIOUS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 940.

No. 01–1814. TERRILL *v.* CHAO, SECRETARY OF LABOR. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 99.

No. 01–1815. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 198.

No. 01–1816. NAJJAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 283 F. 3d 1306.

No. 01–1818. SANTIAGO *v.* K-SIX TELEVISION, INC., ET AL. Sup. Ct. Tex. Certiorari denied.

No. 01–1819. SALGADO ET AL. *v.* ROSALES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 582.

No. 01–1820. RODRIGUEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 56 M. J. 336.

No. 01–1821. SMITH *v.* PLATI ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 258 F. 3d 1167.

No. 01–1822. PAPPA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 37 Fed. Appx. 551.

No. 01–1824. RICHLAND BOOKMART, INC., DBA TOWN AND COUNTRY *v.* NICHOLS. C. A. 6th Cir. Certiorari denied. Reported below: 278 F. 3d 570.

No. 01–1825. FARBER *v.* CITY OF UTICA ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 97 N. Y. 2d 476, 769 N. E. 2d 799.

No. 01–1826. FORSHEY *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 284 F. 3d 1335.

No. 01–1828. RUIZ DE CHAVEZ *v.* UNITED STATES; and
No. 01–10817. MOLINA-MONTOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 873.

No. 01–1829. DELTA AIR LINES, INC. *v.* FERRIS. C. A. 2d Cir. Certiorari denied. Reported below: 277 F. 3d 128.

No. 01–1830. DETROIT NEWSPAPER AGENCY *v.* DETROIT TYPOGRAPHICAL UNION, LOCAL 18. C. A. 6th Cir. Certiorari denied. Reported below: 283 F. 3d 779.

No. 01–1832. MOSBY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–1833. VONDERHEIDE *v.* CAVALRY INVESTMENTS, LLC. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 01–1834. SCHIFFER *v.* VILLAGE OF HASTINGS-ON-HUDSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 776.

No. 01–1835. STAHL *v.* NOVARTIS PHARMACEUTICALS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 283 F. 3d 254.

No. 01–1836. WALKER *v.* PROVIDENT LIFE & ACCIDENT INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 279 F. 3d 1289.

No. 01–1837. CALDRELLO ET UX. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. App. Ct. Conn. Certiorari denied. Reported below: 68 Conn. App. 68, 789 A. 2d 1005.

No. 01–1838. COPERTINO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 281 F. 3d 1284.

No. 01–1841. CHEMI *v.* STATE BAR OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 01–1842. AMERICAN RELIABLE INSURANCE CO. ET AL. *v.* STILLWELL ET UX. Sup. Ct. App. W. Va. Certiorari denied.

No. 01–1843. MERCY HOSPITAL, INC. *v.* FOGLEMAN. C. A. 3d Cir. Certiorari denied. Reported below: 283 F. 3d 561.

No. 01–1844. BAKER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–1845. BONVILLAIN ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 836.

No. 01–1848. SMYTH ET AL. *v.* RIVERO, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 282 F. 3d 268.

No. 01–1849. INFINITE PICTURES, INC. *v.* INTERACTIVE PICTURES CORP., FKA OMNIVIEW, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 274 F. 3d 1371.

No. 01–1850. MADGE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 604.

No. 01–1852. JUDICIAL COUNCIL FOR THE SUPERIOR COURT OF GUAM *v.* PANGELINAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 276 F. 3d 539.

No. 01–1853. GARDINER *v.* GARDINER. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 191, 42 P. 3d 120.

No. 01–1854. LUNDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 838.

No. 01–1855. LEMELSON MEDICAL, EDUCATION & RESEARCH FOUNDATION *v.* SYMBOL TECHNOLOGIES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 277 F. 3d 1361.

No. 01–1856. HAYWOOD *v.* FERGUSON, JUDGE, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 925.

No. 01–1857. HERSCHAFT *v.* NEW YORK BOARD OF ELECTIONS. C. A. 2d Cir. Certiorari denied. Reported below: 37 Fed. Appx. 17.

No. 01–1858. IHNEN ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 272 F. 3d 577.

No. 01–1859. WHITE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 348 S. C. 532, 560 S. E. 2d 420.

No. 01–1860. SOVAK ET AL. *v.* CHUGAI PHARMACEUTICAL CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 280 F. 3d 1266 and 289 F. 3d 615.

No. 01–1861. SVERIGES ANGFARTYGS ASSURANS FORENING, DBA THE SWEDISH CLUB *v.* GLOVEGOLD SHIPPING LTD. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 791 So. 2d 4.

No. 01–1863. BAY VIEW, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 278 F. 3d 1259.

No. 01–1864. MEEK *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 806 So. 2d 236.

No. 01–1866. WESTON *v.* FEDERAL EXPRESS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 795.

No. 01–1868. BROWN *v.* TOKIO MARINE & FIRE INSURANCE CO., LTD., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 871.

No. 01–1869. BUCKINGHAM TOWNSHIP *v.* WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 27 Fed. Appx. 87.

No. 01–1870. COBB ET AL. *v.* ROSHTO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 01–1871. PRATT ET AL. *v.* NATIONAL POSTAL MAIL HANDLERS UNION, LOCAL 305, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 166.

No. 01–1872. LEON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–1874. VARGAS-HARRISON *v.* RACINE UNIFIED SCHOOL DISTRICT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 272 F. 3d 964.

No. 01–1875. GUARD PUBLISHING CO., DBA THE REGISTER-GUARD *v.* WILLMS, ACTING REGIONAL DIRECTOR, NINETEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 620.

No. 01–1876. FRANCO *v.* J. M. PAINTING AND DRYWALL ET AL. Sup. Ct. Nev. Certiorari denied.

No. 01–1877. GRANADOS-MONDRAGON *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 695.

No. 01–1879. GUN OWNERS' ACTION LEAGUE, INC., ET AL. *v.* SWIFT, ACTING GOVERNOR OF MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 284 F. 3d 198.

No. 01–1880. GROSS ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 272 F. 3d 333.

No. 01–1881. MALONEY *v.* GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT OF THE STATE OF NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 282 App. Div. 2d 112, 723 N. Y. S. 2d 674.

No. 01–1883. FEDERAL INSURANCE CO. *v.* JONES ET UX. C. A. 6th Cir. Certiorari denied.

No. 01–1884. RICE *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–1885. POLLARD *v.* HIGH'S OF BALTIMORE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 281 F. 3d 462.

No. 01–1886. EDWARDS ET VIR *v.* ACADIA REALTY TRUST, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 936.

No. 01–7655. LIGONS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 565 Pa. 417, 773 A. 2d 1231.

No. 01–7909. HAMMONS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 01–8354. FRIEND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 177.

No. 01–8830. ENGLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 01–8891. ORTIZ-IRIGOYEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 152.

No. 01–8914. CALLIER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 57.

No. 01–9016. PELLETIER *v.* FEDERAL HOME LOAN BANK BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 762.

No. 01–9056. BOTELLO, AKA BENITEZ BOTELLO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 269 F. 3d 905.

No. 01–9064. HAGEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 578.

No. 01–9097. PAUL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 601, 555 S. E. 2d 716.

No. 01–9265. KUYPERS *v.* COMPTROLLER OF THE TREASURY OF MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 161.

No. 01–9270. PARIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 450.

No. 01–9293. GOSIER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 205 Ill. 2d 198, 792 N. E. 2d 1266.

No. 01–9380. O'NEAL, AKA MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 651.

No. 01–9423. TAYLOR *v.* PEARL CRUISES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 1087.

No. 01–9424. TALLINI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 202.

No. 01–9452. DEAL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 802 So. 2d 1254.

No. 01–9455. ORSO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 266 F. 3d 1030.

No. 01–9483. IRVIN *v.* HAWLEY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 403.

No. 01–9504. EVERETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 270 F. 3d 986.

No. 01–9509. BERRY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 802 So. 2d 1033.

No. 01–9517. HARROWER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 202.

No. 01–9574. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 198.

No. 01–9579. DIXON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 636.

No. 01–9644. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 276 F. 3d 930.

No. 01–9647. BARNES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 929.

No. 01–9668. PHILLIPS *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 326 Ill. App. 3d 157, 759 N. E. 2d 946.

No. 01–9698. WOOTEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–9779. SHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 281 F. 3d 1283.

No. 01–9795. CHILDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 277 F. 3d 947.

No. 01–9827. DUNCAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 278 F. 3d 537.

No. 01–9840. AYALA-CERDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 654.

No. 01–9855. ROBERSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 272 Kan. 1143, 38 P. 3d 715.

No. 01–9880. RASTEN *v.* BOURNEWOOD HOSPITAL ET AL.; and No. 01–10472. RASTEN *v.* GOLDBERG ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 15 Fed. Appx. 1.

No. 01–9887. ORTIZ CAMERON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–9910. MCCORMICK *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 786 So. 2d 981.

No. 01–9913. THACKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–9927. KELLY *v.* NORTEL NETWORKS CORP. C. A. 1st Cir. Certiorari denied. Reported below: 18 Fed. Appx. 19.

No. 01–9947. ENGLISH *v.* MEACHAM ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 897.

No. 01–9954. HOLCOMB *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 802 So. 2d 421.

No. 01–9956. MOODY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 323 Ill. App. 3d 1149, 800 N. E. 2d 886.

No. 01–9957. MCLINDON *v.* RUSSELL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 349.

No. 01–9958. TEDDER *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 01–9959. VORE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–9961. MOBLEY *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 01–9963. JOHNSON *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 01–9964. LOPEZ *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 837 So. 2d 894.

No. 01–9968. BREDEMANN *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–9981. MITCHELL *v.* REES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 752.

No. 01–9985. PRIDGEN *v.* SHANNON ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–9986. PEALOCK, AKA CORN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–9987. MUTCH *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 01–9989. TURNER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–9990. WHITE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 322 Ill. App. 3d 1047, 798 N. E. 2d 425.

No. 01–9993. WILSON *v.* JOHNSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–9995. KEMP *v.* CITY OF BUFFALO ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 97 N. Y. 2d 693, 765 N. E. 2d 295.

No. 01–9996. JAMES *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 01–9997. WHITEBIRD *v.* SNIDER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 783.

No. 01–9998. WILLIAMS *v.* CHAPMAN, WARDEN. Super. Ct. Baldwin County, Ga. Certiorari denied.

No. 01–10000. CARTER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 754 N. E. 2d 877.

No. 01–10004. RICOTTA *v.* RICOTTA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–10007. MALLARD *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10008. STANFORD *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 266 F. 3d 442.

No. 01–10010. SKOLNICK ET AL. *v.* CERVENKA ET AL. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10011. FLOWERS *v.* WALTER. C. A. 9th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 658.

No. 01–10014. VANN *v.* SKELOS, NEW YORK STATE SENATOR, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 13 Fed. Appx. 62.

No. 01–10015. YOUNG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 782 A. 2d 1061.

No. 01–10017. PRITCHARD *v.* LUBMAN, TRUSTEE. C. A. 4th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 133.

No. 01–10018. SORKPOR *v.* BANK OF BOSTON. C. A. 1st Cir. Certiorari denied.

No. 01–10020. REDDEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10023. KOLB *v.* WYOMING DEPARTMENT OF CORRECTIONS. Sup. Ct. Wyo. Certiorari denied.

No. 01–10024. KEMP *v.* NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 97 N. Y. 2d 720, 767 N. E. 2d 147.

No. 01–10025. SCHREIBER *v.* AULT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 82.

No. 01–10027. APAO *v.* PENAROSA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–10034. JACKSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 121.

No. 01–10035. LUCIO *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 812 So. 2d 420.

No. 01–10037. PARKS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 146 N. C. App. 568, 553 S. E. 2d 695.

No. 01–10038. SADDLER *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–10039. JONES *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10040. STANLEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 346 Ark. xxi.

No. 01–10041. JACKSON *v.* CITY OF FAIRBANKS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 637.

No. 01–10043. BARFIELD *v.* GIST. C. A. 8th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 590.

No. 01–10045. SCOTT *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 146 N. C. App. 283, 551 S. E. 2d 916.

No. 01–10048. SEWALD *v.* OPPORTUNITY VILLAGE ARC, INC. Sup. Ct. Nev. Certiorari denied.

No. 01–10049. ROGERS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10058. LOFTEN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 01–10061. BURTON *v.* KEMNA, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–10063. DANNER *v.* DILL. Ct. App. Ga. Certiorari denied.

No. 01–10064. LEWIEL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10066. VARDIMAN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 146 N. C. App. 381, 552 S. E. 2d 697.

No. 01–10067. TUCKER *v.* STINE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 184.

No. 01–10069. HOGAN *v.* ALABAMA EMPLOYEES' RETIREMENT SYSTEM BOARD OF CONTROL. Sup. Ct. Ala. Certiorari denied. Reported below: 839 So. 2d 683.

No. 01–10072. SIMMONS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 805 So. 2d 452.

No. 01–10075. VEAL *v.* IOWA CORRECTIONAL INSTITUTE FOR WOMEN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 274 F. 3d 479.

No. 01–10077. WINKE *v.* WINKE. Sup. Ct. Iowa. Certiorari denied.

No. 01–10078. WILLIFORD *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 839.

No. 01–10079. WHITE *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 01–10082. SOSA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10083. BATOR *v.* HALLOCK ELECTRIC ET AL. Ct. App. Minn. Certiorari denied.

No. 01–10091. DIEHL ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 276 F. 3d 32.

No. 01–10097. MUTCH *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 01–10099. LOGAN *v.* PEACOCK. C. A. 11th Cir. Certiorari denied.

No. 01–10103. CHRISTIAN *v.* BASKERVILLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 200.

No. 01–10104. CLAYTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–10105. KLEYPAS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 272 Kan. 894, 40 P. 3d 139.

No. 01–10106. BURGESS *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 01–10108. ALLEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10110. MAXWELL *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 01–10111. MELICE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 636.

No. 01–10113. TURNER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10114. KING *v.* CHILDS (two judgments). Ct. Sp. App. Md. Certiorari denied.

No. 01–10116. IN RE PHILLIPS. Sup. Ct. Cal. Certiorari denied.

No. 01–10119. NELSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 277 F. 3d 164.

No. 01–10121. NEILL *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 278 F. 3d 1044.

No. 01–10127. JOHNSON *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 717.

No. 01–10130. BEAULEAUX *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 01–10137. WOODALL *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 63 S. W. 3d 104.

No. 01–10138. WHIGHAM *v.* DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10139. TULLY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–10140. ANDERSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 158.

No. 01–10142. BRITT *v.* SMITH, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 611, 556 S. E. 2d 435.

No. 01–10143. ANTHONY *v.* ROBERSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 419.

No. 01–10145. CARTER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10146. SUST *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 807 So. 2d 656.

No. 01–10149. BANKS *v.* AMERENUE. C. A. 8th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 483.

No. 01–10150. CAMP *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 848.

No. 01–10151. CORRELL *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 01–10153. CLARK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10154. ELINE *v.* BRILL. C. A. 8th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 541.

No. 01–10156. WILLIAMS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10159. BURGOS VEGA *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 259 Conn. 374, 788 A. 2d 1221.

No. 01–10160. MEFFORD *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 456.

No. 01–10164. JAFFE *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY. Ct. App. Ariz. Certiorari denied.

No. 01–10165. ABORDO *v.* O'DELL, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 615.

No. 01–10169. MORALES *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 281 F. 3d 55.

No. 01–10171. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 938.

No. 01–10177. PRESTON *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 01–10178. MONK *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 470.

No. 01–10180. ISSAC *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–10184. WARFIELD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10186. YOUNG *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10188. WINCHESTER *v.* DEES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10189. WASHINGTON *v.* RAY, WARDEN. Ct. Crim. App. Okla. Certiorari denied.

No. 01–10190. BUTCHER *v.* LAVIGNE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10193. HALL *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 01–10195. MORRIS *v.* PUSHART ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 222.

No. 01–10196. ANGEL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10205. STAFFORD *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 92 Cal. App. 4th 1090, 112 Cal. Rptr. 2d 476.

No. 01–10207. LOFTEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10211. ARMSTRONG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10215. ARCHER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–10219. BLANEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–10222. ROCCO *v.* NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND. C. A. 2d Cir. Certiorari denied. Reported below: 281 F. 3d 62.

No. 01–10224. STANLEY *v.* ARMSTRONG, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 67 Conn. App. 357, 786 A. 2d 1249.

No. 01–10225. SALEH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 106 Wash. App. 1055.

No. 01–10228. WILLIAMS *v.* GREYHOUND BUS LINES ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–10229. VEALE ET AL. *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 01–10230. VEALE ET AL. *v.* NEW HAMPSHIRE ET AL. Super. Ct. N. H., Hillsborough County. Certiorari denied.

No. 01–10231. JOHNSON *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10232. GREGORY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 263 Va. 134, 557 S. E. 2d 715.

No. 01–10237. JOHNSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 148 N. C. App. 407, 560 S. E. 2d 885.

No. 01–10243. GONZALES *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 247 F. 3d 1066 and 279 F. 3d 922.

No. 01–10245. LYONS-BEY *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10249. SIMMONS *v.* CITY OF SHREVEPORT CODE ENFORCEMENT BUREAU. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 1080.

No. 01–10250. COLE *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 01–10252. STEWART *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–10253. RAULS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–10254. ROBICHAUX *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 788 So. 2d 458.

No. 01–10255. MCGHEE *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 01–10256. KILBY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 27 Fed. Appx. 123.

No. 01–10260. EARL *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10261. MERCADO *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 938.

No. 01–10263. WILSON *v.* SPARKMAN, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 01–10264. RILEY *v.* EMERY WORLDWIDE AIRLINES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 936.

No. 01–10266. BURNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 272 F. 3d 220.

No. 01–10268. TIMBERLAKE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 753 N. E. 2d 591.

No. 01–10273. TIJERINA *v.* UTAH BOARD OF PARDONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 930.

No. 01–10274. McMillian *v.* Jones, Warden. C. A. 11th Cir. Certiorari denied.

No. 01–10275. Winke *v.* Winke. Sup. Ct. Iowa. Certiorari denied.

No. 01–10276. Burns *v.* City of Garland. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 835.

No. 01–10277. Winke *v.* Iowa District Court for Lee County. Sup. Ct. Iowa. Certiorari denied.

No. 01–10280. Macias *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 224.

No. 01–10282. Lucas *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 640, 555 S. E. 2d 440.

No. 01–10283. Laird *v.* Spelling. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–10285. Murray *v.* Norstar Mortgage Corp., a Division of Fleet Real Estate Funding Corp. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 747.

No. 01–10286. Payne *v.* West Virginia Public Service Commission et al. Sup. Ct. App. W. Va. Certiorari denied.

No. 01–10290. Hayes *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 12 Fed. Appx. 945.

No. 01–10291. Landers *v.* Kemna, Superintendent, Crossroads Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 01–10292. Kulka *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 01–10293. Brunt, aka Brount *v.* Taylor, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 213.

No. 01–10295. Sweeney *v.* Moore, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 941.

No. 01–10297. SMITH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10298. ENGRON *v.* DEPARTMENT OF LABOR. C. A. 7th Cir. Certiorari denied.

No. 01–10300. EASTERWOOD *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 703.

No. 01–10301. COMPTON *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 333 Ore. 274, 39 P. 3d 833.

No. 01–10302. MCCRACKEN *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 268 F. 3d 970.

No. 01–10308. TAYLOR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 282 F. 3d 856.

No. 01–10310. POWELL *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10315. VAUGHN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–10317. EMEANA *v.* SABATINO. C. A. 2d Cir. Certiorari denied. Reported below: 13 Fed. Appx. 36.

No. 01–10326. WEHUNT *v.* BASS, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 01–10330. MCCORMICK *v.* LONG. Sup. Ct. Kan. Certiorari denied. Reported below: 272 Kan. 627, 35 P. 3d 815.

No. 01–10333. KENNEDY *v.* PARAMOUNT PICTURES CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10338. BOYD *v.* ST. PAUL SCHOOLS, INDEPENDENT SCHOOL DISTRICT 625. C. A. 8th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 632.

No. 01–10341. HERNANDEZ OCANA *v.* PUERTO RICO POLICE DEPARTMENT. Sup. Ct. P. R. Certiorari denied.

No. 01–10343. DIXON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10344. ENGLISH *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 01–10345. BARBER *v.* WEIS MARKETS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 228.

No. 01–10346. BARBER *v.* INTERNATIONAL BAR ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 313.

No. 01–10348. AUTREY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 156.

No. 01–10351. SMITH *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 310.

No. 01–10352. MORO *v.* HOLMES, WARDEN. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 01–10353. GRAYSON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 824 So. 2d 844.

No. 01–10355. BRACON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 315 Ill. App. 3d 1236, 777 N. E. 2d 1093.

No. 01–10359. MCGHGHY *v.* ALBAUGH. Ct. App. Iowa. Certiorari denied.

No. 01–10360. WILLIS *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1120.

No. 01–10361. WILLIAMS *v.* KANE ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–10368. ADAMS *v.* HOLT, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 01–10370. MCCONE *v.* WOODHOUSE, ATTORNEY GENERAL OF WYOMING. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 977.

No. 01–10375. BOWEN *v.* NORTH CAROLINA ET AL. Sup. Ct. N. C. Certiorari denied.

No. 01–10380. BURTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10381. GAMMALO *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 93 Ohio St. 3d 1474, 757 N. E. 2d 772.

No. 01–10383. MOYE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10385. TIDIK *v.* WAYNE COUNTY FRIEND OF THE COURT ET AL. C. A. 6th Cir. Certiorari denied.

No. 01–10388. CINTRON *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 360.

No. 01–10392. GRAHAM ET AL. *v.* LATIN RITE CATHOLIC DIOCESE OF PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 100.

No. 01–10393. HAMEL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 01–10395. GREEN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10396. GRAESER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 01–10398. GRIGGER *v.* MCCOY, SUPERINTENDENT, CAYUGA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–10399. SANCHEZ *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 282 F. 3d 78.

No. 01–10400. HAYES *v.* HARGETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 888.

No. 01–10401. GRIGGS *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10403. FELDER *v.* GEORGIA; and
No. 01–10844. WARD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 870, 561 S. E. 2d 88.

No. 01–10404. HARRINGTON *v.* ADAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10407. ARTIS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 141 Md. App. 755.

No. 01–10412. KINGSOLVER *v.* RAY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 899.

No. 01–10413. LEAL-BERNAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 129.

No. 01–10414. KEELEN *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 836.

No. 01–10418. MCMILLAN *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 194.

No. 01–10422. HOWLETT *v.* SCHOOL BOARD OF THE CITY OF NORFOLK. C. A. 4th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 135.

No. 01–10427. MCLEOD *v.* THIBODEAUX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 832.

No. 01–10428. CALDERIN *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 976.

No. 01–10433. WILLIAMS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 373.

No. 01–10437. GRIMES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 258.

No. 01–10440. HALL *v.* THOMAS, DEPUTY WARDEN. Ct. App. Ariz. Certiorari denied.

No. 01–10441. FAISON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–10442. FRAZIER *v.* BASKERVILLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 191.

No. 01–10443. HARRIS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 01–10444. NICHOLSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 1, 558 S. E. 2d 109.

No. 01–10445. PIPPIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–10448. PEREZ *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–10450. LEWIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–10452. MORRIS *v.* MEYERS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–10454. ANGEVINE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 281 F. 3d 1130.

No. 01–10459. DAVIS *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10462. ROLLINS *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10465. PARMAR *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 263 Neb. 213, 639 N. W. 2d 105.

No. 01–10468. DANIELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 46.

No. 01–10470. SEAGER *v.* IOWA. Ct. App. Iowa. Certiorari denied.

No. 01–10471. RANDOLPH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 117 Nev. 970, 36 P. 3d 424.

No. 01–10473. CARRICO *v.* WADDINGTON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 859.

No. 01–10474. BIAGAS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10479. TODD *v.* SCHOMIG, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 283 F. 3d 842.

No. 01–10481. MILLER *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT (CALIFORNIA, REAL PARTY IN INTEREST). Sup. Ct. Cal. Certiorari denied.

No. 01–10482. MUSGROVE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–10483. MCCURRY *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10485. ALVARADO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10488. FLETCHER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 354 N. C. 455, 555 S. E. 2d 534.

No. 01–10489. FORD *v.* CURTIS. C. A. 6th Cir. Certiorari denied. Reported below: 277 F. 3d 806.

No. 01–10490. IRISH *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 807 So. 2d 208.

No. 01–10494. HOYTE-MESA *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 272 F. 3d 989.

No. 01–10496. GIVENS *v.* THOMPSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 52.

No. 01–10497. KIPP *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 26 Cal. 4th 1100, 33 P. 3d 450.

No. 01–10498. SMEDLEY *v.* PIERCE. C. A. 11th Cir. Certiorari denied.

No. 01–10500. WINCHESTER *v.* DEES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10501. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–10502. MALAVE *v.* HEDRICK, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 271 F. 3d 1139.

No. 01–10504. LARSEN *v.* HONSTED ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 938.

No. 01–10505. BALL *v.* BAKER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1377.

No. 01–10509. BRADLEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–10516. FISHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 933.

No. 01–10521. WEAVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 F. 3d 302.

No. 01–10523. PATTERSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10524. THYMES *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 01–10526. THOMAS *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10527. STIGGERS *v.* FLEET MORTGAGE CORP. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 01–10528. SANDERS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 01–10529. SALAMEH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 261 F. 3d 271.

No. 01–10530. CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 442.

No. 01–10532. BENNINGS *v.* CONNECTICUT DEPARTMENT OF CORRECTIONS ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–10533. LOPEZ-ZAMORA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 463.

No. 01–10535. JERECKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 97.

No. 01–10536. MESE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 152.

No. 01–10537. MERCADO *v.* VAUGHN, DISTRICT ATTORNEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 684.

No. 01–10538. TERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10539. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10540. PETERSON *v.* ELLIS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 31.

No. 01–10541. RUBIO-ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 378.

No. 01–10542. AUSTIN *v.* FORD MODELS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 22 Fed. Appx. 76.

No. 01–10543. PALMER *v.* UNITED STATES HOUSE OF REPRESENTATIVES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–10544. ROMNEY *v.* ALLSTATE INSURANCE CO. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–10545. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1376.

No. 01–10546. ATKINS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10547. RUSSELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 348.

No. 01–10548. DARLING *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 808 So. 2d 145.

No. 01–10549. ROBINSON *v.* REISH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 223.

No. 01–10550. NELSON *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10552. TIGGART *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 750.

No. 01–10553. TURKS *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10554. KALSKI *v.* CALIFORNIA ASSOCIATION OF PROFESSIONAL EMPLOYEES. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 497.

No. 01–10555. BREDEMANN *v.* GRANT ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10556. LUCAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 282 F. 3d 414.

No. 01–10557. JACKSON *v.* MARSHALL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 01–10558. JACKSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10559. MCSWAIN *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 01–10560. MORGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 270 F. 3d 625.

No. 01–10562. KIBLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 279 F. 3d 511.

No. 01–10563. LEONARD *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 811 So. 2d 902.

No. 01–10564. JONES *v.* VIRGINIA DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied.

No. 01–10565. MEJIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 687.

No. 01–10566. AUREOLES PINEDA *v.* SCOTT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 200.

No. 01–10567. RODRIGUEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 F. 3d 968.

No. 01–10568. STRASSBERG *v.* NEW YORK HOTEL & MOTEL TRADES COUNCIL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 15.

No. 01–10569. SURRATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 172 F. 3d 559.

No. 01–10570. SMEDLEY *v.* CITY OF DOTHAN. Sup. Ct. Ala. Certiorari denied. Reported below: 852 So. 2d 206.

No. 01–10571. NOLTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 157.

No. 01–10572. OLIVEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 1299.

No. 01–10573. MCCALLUP *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–10574. POST *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT (CALIFORNIA, REAL PARTY IN INTEREST). Sup. Ct. Cal. Certiorari denied.

No. 01–10575. BIESER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–10576. TANG *v.* NORTHERN CHEYENNE TRIBE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 438.

No. 01–10577. WASHINGTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10578. WHEAT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 278 F. 3d 722.

No. 01–10579. WELLS *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10580. ASIDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 921.

No. 01–10581. JIMENEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 28 Fed. Appx. 37.

No. 01–10582. LUGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 534.

No. 01–10583. BOUDWIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 704.

No. 01–10585. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 100.

No. 01–10586. LOPEZ *v.* SECRETARY OF THE NAVY ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 15 Fed. Appx. 781.

No. 01–10587. HOM *v.* REUBINS. C. A. 2d Cir. Certiorari denied. Reported below: 28 Fed. Appx. 104.

No. 01–10588. GARZA-GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 703.

No. 01–10589. FINDLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 272 F. 3d 116.

No. 01–10590. FRENCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 704.

No. 01–10591. HOLDEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10593. FOSTER, AKA JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 225.

No. 01–10594. HERNANDEZ *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 282 F. 3d 1132.

No. 01–10596. FAHLFEDER *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL.

C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 621.

No. 01–10597. BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1380.

No. 01–10598. HARPER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–10599. PETERSON *v.* UTAH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 937.

No. 01–10600. TRAMBLE-BEY *v.* SKIBA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 486.

No. 01–10601. CASTILLO DE SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 01–10602. BAILEY *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ET AL. C. A. 6th Cir. Certiorari denied.

No. 01–10603. MYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 F. 3d 407.

No. 01–10604. PIZZICHIELLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 272 F. 3d 1232.

No. 01–10605. CASSEUS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 282 F. 3d 253.

No. 01–10606. MEJIA-PLASENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 444.

No. 01–10607. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 38 Fed. Appx. 26.

No. 01–10608. JOHNSON *v.* NEWLAND ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10609. CRAWFORD *v.* HARRISON ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–10610. BAKER *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 01–10611. RODRIGUEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10612. SKINNER *v.* STAPLES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 705.

No. 01–10613. STILL *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10614. SMEDLEY *v.* CITY OF OZARK ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10615. RICHMOND *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10616. GRAY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 780 So. 2d 1042.

No. 01–10617. FINK *v.* DAVIS ET AL. Sup. Ct. Cal. Certiorari denied.

No. 01–10618. ST. PE *v.* MORRISON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–10619. RUMSEY *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 500.

No. 01–10620. REESE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 225.

No. 01–10622. RATZLAFF *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 150.

No. 01–10623. REEDER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10624. ROZIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 533.

No. 01–10625. RAPOSO *v.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. C. A. 2d Cir. Certiorari denied.

No. 01–10626. BATTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 574.

No. 01–10627. WILLIAMS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10628. REGIAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 128.

No. 01–10629. SEPULVEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 936.

No. 01–10630. NELSON *v.* WEST VIRGINIA. Cir. Ct. Putnam County, W. Va. Certiorari denied.

No. 01–10631. MCCOY *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied.

No. 01–10632. KURKOWSKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 281 F. 3d 699.

No. 01–10633. WADDELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 786 A. 2d 561.

No. 01–10634. TRICE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 19 Fed. Appx. 853.

No. 01–10636. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 214.

No. 01–10637. SIFUENTES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 555.

No. 01–10638. MCCALL *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 01–10639. LAMISON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10640. RODRIGUEZ AGUIRRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 803.

No. 01–10641. SCHLEVE *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 775 So. 2d 1187.

No. 01–10642. NOVAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 F. 3d 986.

No. 01–10643. PEYTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 655.

No. 01–10644. PATTERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 52.

No. 01–10645. NOLL ET UX. *v.* PETERSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10646. GATEWOOD *v.* ATTORNEY GENERAL OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–10647. HOWELL *v.* KAISER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 925.

No. 01–10648. GORHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10650. MARTINEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 01–10651. HICKEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 280 F. 3d 65.

No. 01–10652. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 88.

No. 01–10653. HENNINGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–10654. ISIDOR *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 57.

No. 01–10655. HOFFENBERG *v.* SCHULTE, ROTH & ZABEL. C. A. 2d Cir. Certiorari denied.

No. 01–10656. MEANS *v.* DELANEY, MAYOR, CITY OF JACKSONVILLE, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10657. MONTEZ *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 819 So. 2d 768.

No. 01–10658. TRIGUEROS-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 553.

No. 01–10659. YOCUM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 226.

No. 01–10660. WHITE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 43.

No. 01–10661. THORNTON *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 533.

No. 01–10662. RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 704.

No. 01–10663. STRONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 534.

No. 01–10664. FRANCISCO ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 880.

No. 01–10666. ERNESTO CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 548.

No. 01–10667. BATTLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 289 F. 3d 661.

No. 01–10668. SPRUTH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–10669. IBRAHIM, AKA ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–10670. GRANT *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–10673. SMEDLEY *v.* ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 01–10674. WYNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 854.

No. 01–10675. TYNDALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10676. WILLIAMS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10677. CURTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 198.

No. 01–10678. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 121.

No. 01–10679. ABBAS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 358.

No. 01–10680. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 223.

No. 01–10681. SCHREIBER *v.* BUREAU OF PRISONS. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–10682. HARRIS *v.* WARDEN, MAINE DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 01–10684. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 272 F. 3d 1069.

No. 01–10685. BOCKORNY *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 419.

No. 01–10686. HUTCHINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10687. HEBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 150.

No. 01–10688. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10689. HOOKER *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 01–10690. MORRIS *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 235.

No. 01–10691. ESPINOZA PENA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 91.

No. 01–10692. JACKSON ET AL. *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 793 So. 2d 571.

No. 01–10693. JOHNSON *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10694. LYNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 656.

No. 01–10695. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–10696. TURAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 725, 559 S. E. 2d 463.

No. 01–10697. TYLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 84.

No. 01–10698. KING *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 506.

No. 01–10699. BARAJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 396.

No. 01–10700. BOWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 504.

No. 01–10701. BURNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 992.

No. 01–10702. DONALD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–10703. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 F. 3d 968.

No. 01–10704. SINKFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 993.

No. 01–10705. ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 F. 3d 683.

No. 01–10706. ROSS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–10707. GRAVES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 810 So. 2d 986.

No. 01–10708. FRENCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 387.

No. 01–10709. HODGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 993.

No. 01–10710. POLK *v.* DETENTION CENTER OF NATCHITOCHES PARISH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 128.

No. 01–10711. GREGORY ET UX. *v.* UNITED STATES BANKRUPTCY COURT. C. A. 10th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 921.

No. 01–10712. HERBERT *v.* JENNE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 856.

No. 01–10713. BROWNING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 873.

No. 01–10714. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–10715. BONDS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 01–10716. SCOTT *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 01–10717. ALOMAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10718. STOKES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 290 App. Div. 2d 71, 736 N. Y. S. 2d 781.

No. 01–10719. SKINNER *v.* BUREAU OF PRISONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 942.

No. 01–10720. SOUCH *v.* SCHIAVO, DEPUTY WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 289 F. 3d 616.

No. 01–10721. PEREZ ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 280 F. 3d 318.

No. 01–10722. PATAK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10723. VIDALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 436.

No. 01–10724. BENNETT *v.* NEW HAMPSHIRE. C. A. 1st Cir. Certiorari denied.

No. 01–10726. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 995.

No. 01–10727. MOREJON *v.* SWOPE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 389.

No. 01–10728. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–10730. DUNCAN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 827 So. 2d 861.

No. 01–10731. KERNS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 43.

No. 01–10732. KEMMERLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 285 F. 3d 644.

No. 01–10733. MARSHALL *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 257.

No. 01–10734. GRAY-BEY *v.* SNYDER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–10735. MORTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 288 App. Div. 2d 557, 734 N. Y. S. 2d 249.

No. 01–10736. MCCRIGHT *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–10737. HARRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 487.

No. 01–10738. RICHARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 308.

No. 01–10739. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 158.

No. 01–10740. SOLOMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 148.

No. 01–10741. MILES *v.* WATERS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 107.

No. 01–10742. COOPER *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 1104.

No. 01–10743. SPAIN *v.* WASTE MANAGEMENT OF TEXAS, INC. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 01–10745. BROOKS *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 01–10746. WATKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 01–10747. YANCEY *v.* RASCOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 106.

No. 01–10748. WIEGERS *v.* WEBER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 218.

No. 01–10749. VANDI *v.* ABBEVILLE CITY COURT, VERMILION PARISH, LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 812 So. 2d 647.

No. 01–10750. WOLF ET UX. *v.* SCOBIE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 545.

No. 01–10751. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 221.

No. 01–10752. PENIGAR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 127.

No. 01–10753. DURAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 991.

No. 01–10754. MCKNIGHT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–10755. WILBERT *v.* LARSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–10756. DAY *v.* VIRGINIA PAROLE BOARD ET AL. Sup. Ct. Va. Certiorari denied.

No. 01–10757. AYERS ET AL. *v.* MUSGROVE, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 160.

No. 01–10758. CUCHET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10759. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10760. AGUILAR CORTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–10761. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 126.

No. 01–10762. ELDER *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied.

No. 01–10763. BEDFORD *v.* PACHECO. Sup. Ct. R. I. Certiorari denied. Reported below: 787 A. 2d 1210.

No. 01–10764. BENHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 696.

No. 01–10765. GARCIA CARRANZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 930.

No. 01–10766. CURRY *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 01–10767. PELTIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 276 F. 3d 1003.

No. 01–10768. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–10769. BONIFACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–10770. VASQUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 797.

No. 01–10771. THRASHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–10772. WAHL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 290 F. 3d 370.

No. 01–10773. LAZENBY *v.* WILTEL COMMUNICATIONS, DBA WILLIAMS COMMUNICATIONS SOLUTIONS, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 131.

No. 01–10774. DORSEY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 251 Ga. App. 640, 554 S. E. 2d 278.

No. 01–10775. DUCKETT *v.* QUICK, DIRECTOR, DISTRICT OF COLUMBIA BOARD OF PAROLE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 282 F. 3d 844.

No. 01–10776. RODRIGUEZ *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10777. RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 527.

No. 01–10778. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 365.

No. 01–10779. LOGAN *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–10780. JEREMIAH *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 73 S. W. 3d 857.

No. 01–10781. HONIE *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 57 P. 3d 977.

No. 01–10782. HASS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10783. GUY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 848.

No. 01–10784. MORRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10785. RODRICK *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–10786. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 572.

No. 01–10787. RICH *v.* DOTSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 373.

No. 01–10788. STEPHENS *v.* BURGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10789. SIMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 507.

No. 01–10790. SMITH *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–10791. LEWIS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 01–10792. MCBRIDE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 283 F. 3d 612.

No. 01–10794. MOORING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 287 F. 3d 725.

No. 01–10795. BROWN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–10796. DANIELS *v.* BOROUGH OF MEDIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 100.

No. 01–10797. MEANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10798. MOORE *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 109 S. W. 3d 537.

No. 01–10799. ECTOR *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–10800. DAHLER *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–10801. RAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 457.

No. 01–10802. BALL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 824 So. 2d 1089.

No. 01–10803. ARMSTRONG *v.* COMMODITY FUTURES TRADING COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 284 F. 3d 404.

No. 01–10804. THIBEAUX *v.* KLEMAN. C. A. 5th Cir. Certiorari denied.

No. 01–10805. WAITE *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 97 N. Y. 2d 675, 764 N. E. 2d 390.

No. 01–10806. BUSHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10807. CHAVEZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 01–10808. COLE *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 71 S. W. 3d 163.

No. 01–10809. COOK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 01–10811. CYRUS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 27 Fed. Appx. 19.

No. 01–10812. DRISKELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 277 F. 3d 150.

No. 01–10813. SINKFIELD *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 01–10815. WAGGONER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 152.

No. 01–10816. M. C.-B., MOTHER *v.* IOWA; and
No. 01–10890. D. B., FATHER *v.* IOWA. Ct. App. Iowa. Certiorari denied.

No. 01–10818. MURPHY *v.* MARTIN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 977.

No. 01–10819. PEARSON *v.* STONE. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 01–10820. PROSSER *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10821. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 241.

No. 01–10822. LACAZE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 824 So. 2d 1063.

No. 01–10823. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 390.

No. 01–10824. LOCKLEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 371.

No. 01–10825. MANNING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10826. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10827. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 174.

No. 01–10828. SALAZAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 490.

No. 01–10829. SINGH *v.* BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 846.

No. 01–10831. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 198.

No. 01–10833. TINOCO-JAIMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 202.

No. 01–10834. WADE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–10835. LEGETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10837. MAYERS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 637.

No. 01–10838. BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 468.

No. 01–10839. BORTIS ET AL., DBA BORTIS CONSTRUCTION & DEVELOPMENT *v.* BURD ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 523.

No. 01–10840. TAYLOR *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10841. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 815.

No. 01–10842. SPEARMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–10843. ZAMBRANA *v.* RAY, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 01–10845. ALVAREZ-LICONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 391.

No. 01–10846. C. D. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 812 So. 2d 428.

No. 01–10847. PHELPS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 283 F. 3d 1176.

No. 01–10848. DOSS *v.* BAILEY. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 835.

No. 01–10849. CAMPBELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–10850. CORREA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10852. CHINAKOOL *v.* KORNLAND BUILDING ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10853. KENNEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 283 F. 3d 934.

No. 01–10854. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 1.

No. 01–10855. MICHAUD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 268 F. 3d 728.

No. 01–10856. ROJAS-MILLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 547.

No. 01–10857. MEACHUM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 915.

No. 01–10858. MILLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–10859. GODWIN *v.* MCDADE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 164.

No. 01–10860. FARINA *v.* FLORIDA BOARD OF REGENTS. Sup. Ct. Fla. Certiorari denied. Reported below: 816 So. 2d 126.

No. 01–10861. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 01–10862. HERNANDEZ-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 273 F. 3d 1213.

No. 01–10863. HADDEN *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 42 P. 3d 495.

No. 01–10865. HERNANDEZ *v.* MITCHELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 490.

No. 01–10866. FILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 198.

No. 01–10867. FURLOW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 01–10869. SHA (ENGELHARDT) *v.* MEMORIAL SLOAN KETTERING CANCER CENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 788.

No. 01–10870. EMUCHAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10871. CUEVAS *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 643.

No. 01–10872. ALMERAZ *v.* CALIFORNIA. App. Div., Super. Ct. Cal., San Diego County. Certiorari denied.

No. 01–10874. POWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 283 F. 3d 946.

No. 01–10875. GLOVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 01–10877. FORT *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10878. HANNAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–10879. GAINES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 295.

No. 01–10880. GORDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–10881. GILLEY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 851 So. 2d 637.

No. 01–10882. BRAZIEL *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–10883. TERRY *v.* CROSS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 326.

No. 01–10885. MALPESO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 45.

No. 01–10887. HARRIS *v.* COUNTY OF COOK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 400.

No. 01–10888. BENENHALEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 281 F. 3d 423.

No. 01–10889. RUOTOLO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 286 F. 3d 1059.

No. 01–10891. KIRBY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–10892. COLE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–10893. COLLAZO-APONTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 281 F. 3d 320.

No. 01–10894. DE VINNY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–10895. BLOUNT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 01–10896. SALLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 179.

No. 01–10897. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 261.

No. 01–10899. STOTTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 189.

No. 01–10900. SMEDLEY *v.* ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 01–10901. ROWSEY *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10902. ESTELLE *v.* JOHNSON, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 833.

No. 01–10904. ALEXANDER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–10905. BONNER *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–10906. MCPHERSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 444, 553 S. E. 2d 569.

No. 01–10907. WILLIAMS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 01–10908. PATE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 299.

No. 01–10910. ESPINOZA *v.* PETERSON, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 283 F. 3d 949.

No. 01–10911. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 426.

No. 01–10913. GOODREAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 369.

No. 01–10914. PUTMAN *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1223.

No. 01–10915. BLACKSHEAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 220.

No. 01–10916. PITTMAN *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Buncombe County, N. C. Certiorari denied.

No. 01–10917. COOPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 39.

No. 01–10918. TAYLOR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–10919. THOMPSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 357.

No. 01–10920. RAMIREZ ET AL. *v.* UNITED STATES; and
No. 01–10962. JENKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 80.

No. 01–10921. AMARILLE *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 28 Fed. Appx. 931.

No. 01–10922. MILLER, AKA SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 283 F. 3d 907.

No. 01–10923. ROLETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–10924. COLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 235.

No. 01–10926. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 422.

No. 01–10927. LACY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 256.

No. 01–10928. JACQUE *v.* WESTERN REGIONAL OFF-TRACK BETTING CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 16 Fed. Appx. 52.

No. 01–10929. KEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 625.

No. 01–10930. REDANTE *v.* RAMIREZ-PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 802.

No. 01–10931. BESSENT *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 808 So. 2d 979.

No. 01–10932. SIEBLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10933. ALARCON-JAIMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 553.

No. 01–10934. TIERNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 424.

No. 01–10935. DE LOS SANTOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 719.

No. 01–10936. AARON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 180.

No. 01–10937. PAREDES *v.* UTAH LABOR COMMISSION ET AL. Ct. App. Utah. Certiorari denied.

No. 01–10938. BURTON *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 68 S. W. 3d 490.

No. 01–10939. STAMPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 159.

No. 01–10942. BUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–10943. VERRECCHIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–10944. WILLIAMS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 830 So. 2d 45.

No. 01–10945. WOODALL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 289 App. Div. 2d 1008, 735 N. Y. S. 2d 306.

No. 01–10946. MILES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 195.

No. 01–10947. SALAMI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 274 F. 3d 435.

No. 01–10948. NEWMAN *v.* MORGAN, WARDEN. Ct. App. Ky. Certiorari denied.

No. 01–10949. BALTAZAR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 01–10951. PEEPLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–10952. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 150.

No. 01–10953. WINDHAM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–10954. YEUNG MUNG WENG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 731.

No. 01–10955. CHAVEZ YBARRA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–10956. WILLIAMS *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–10957. RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 856.

No. 01–10958. AHART *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 01–10959. ELLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 302.

No. 01–10960. NEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 226.

No. 01–10961. ANDERSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 831 So. 2d 57.

No. 01–10963. SERRANO *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–10964. BELLIZZI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 387.

No. 01–10965. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 156.

No. 01–10968. RASTEN *v.* TOWN OF BROOKLINE, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 22 Fed. Appx. 29.

No. 01–10969. POSADA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 966.

No. 01–10970. CLEVELAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 71.

No. 01–10971. DAMERVILLE *v.* MUNDT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–10972. BROWN *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 548.

No. 01–10974. CORRALES-QUINTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 440.

No. 01–10975. BECKFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 237.

No. 01–10976. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 283 F. 3d 755.

No. 01–10977. DANIEL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 283 F. 3d 697.

No. 01–10978. DOWNS *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–10979. PARKER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–10981. LIBERTY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 01–10982. ARTURO MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–10983. KATHAWA *v.* MACMEEKIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–10984. MANDRAKE *v.* ATTORNEY GENERAL OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 01–10985. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–10986. KAUFMANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 282 F. 3d 1336.

No. 01–10987. THOMPSON ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 281 F. 3d 1088.

No. 01–10988. VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–10989. HEIM *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 690.

No. 01–10990. GUZMAN-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 436.

No. 01–10991. GOMEZ-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 152.

No. 01–10992. HALL *v.* TYSZKIEWICZ, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 493.

No. 01–10993. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 596.

No. 01–10994. FLETCHER *v.* DAVIS, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–10995. HUNTER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 835.

No. 01–10997. HOLLINGSWORTH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 328.

No. 01–10998. GILCHRIST *v.* ALLEN, SUPERINTENDENT, MASSACHUSETTS CORRECTION INSTITUTION-CEDAR JUNCTION. C. A. 1st Cir. Certiorari denied.

No. 01–10999. GUNDERSEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–11000. HANSEN, AKA WELLS, AKA HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 939.

No. 01–11001. GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–11003. HILL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 01–11004. SALYARD *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 01–11005. VUKADINOVICH *v.* BOARD OF SCHOOL TRUSTEES OF NORTH NEWTON SCHOOL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 278 F. 3d 693.

No. 01–11007. WELCH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–11008. TOUVELL *v.* DEWITT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–11009. TAYLOR *v.* WATERS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1380.

No. 01–11010. RAKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 01–11011. KEELEN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–11012. REYNA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–11013. ESCOBAR DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–11014. EDWARDS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 817 So. 2d 846.

No. 01–11016. DeVillasee *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 244.

No. 01–11017. Blaney *v.* City of Virginia Beach et al. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 322.

No. 01–11018. Taylor *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 01–11019. Wilkes *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 01–11020. Younger *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 01–11021. Lorenzo-Hernandez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 279 F. 3d 19.

No. 01–11022. Hardy *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 01–11023. Bravo *v.* Kuykendall, Warden. C. A. 9th Cir. Certiorari denied.

No. 01–11024. Bailey *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 286 F. 3d 1219.

No. 01–11025. Moody *v.* North Carolina. Gen. Ct. Justice, Super. Ct. Div., Davidson County, N. C. Certiorari denied.

No. 01–11026. Witherspoon *v.* Oklahoma. C. A. 10th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 760.

No. 01–11027. Mack *v.* Artuz, Superintendent, Green Haven Correctional Center. C. A. 2d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 575.

No. 01–11028. Marston *v.* White, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 545.

No. 01–11032. Dodd *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 01–11033. DARNELL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–11034. CAMPBELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 650.

No. 01–11035. CHILTON *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 01–11036. RAYGOZA AGUAYO *v.* UNITED STATES; and PINA ARELLANO, AKA ALBERTO LOPEZ, AKA LOPEZ-GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 240 (first judgment) and 241 (second judgment).

No. 01–11037. ARRINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–2. CONNECTICUT *v.* PHYSICIANS HEALTH SERVICES OF CONNECTICUT, INC. C. A. 2d Cir. Certiorari denied. Reported below: 287 F. 3d 110.

No. 02–3. COBB *v.* TIME, INC., DBA SPORTS ILLUSTRATED. C. A. 6th Cir. Certiorari denied. Reported below: 278 F. 3d 629.

No. 02–4. BRUETMAN *v.* HERBSTEIN; and
No. 02–95. BRUETMAN *v.* HERBSTEIN. C. A. 7th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 158.

No. 02–5. ROSETTE INC. ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 277 F. 3d 1222.

No. 02–6. RESEARCH SYSTEMS CORP. *v.* IPSOS PUBLICITE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 276 F. 3d 914.

No. 02–7. SAN LAZARO ASSN., INC., DBA BIOMEDICAL LABORATORY, ET AL. *v.* CONNELL, CONTROLLER OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 286 F. 3d 1088.

No. 02–8. WOOSLEY *v.* ADOPTION ALLIANCE ET AL. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 02–9. OSBORNE *v.* LORD, SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–11. LAUCK *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 35 Fed. Appx. 861.

No. 02–13. FICHTNER *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 02–14. RUSSO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 259 Conn. 436, 790 A. 2d 1132.

No. 02–16. STONE *v.* CITY OF INDIANAPOLIS PUBLIC UTILITIES DIVISION, DBA CITIZENS GAS & COKE UTILITY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 281 F. 3d 640 and 28 Fed. Appx. 573.

No. 02–17. O'CONNOR *v.* CALIFORNIA TEACHERS' RETIREMENT SYSTEM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 473.

No. 02–21. SEAFREEZE ALASKA, L. P. *v.* HARPER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 278 F. 3d 971.

No. 02–22. ROGGEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 279 F. 3d 573.

No. 02–23. FOXX *v.* DEPARTMENT OF THE NAVY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 95.

No. 02–24. GEORGE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 934.

No. 02–26. IRONS *v.* ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF, INC. C. A. 1st Cir. Certiorari denied.

No. 02–28. BARTH *v.* TOWN OF SANFORD ET AL. C. A. 1st Cir. Certiorari denied.

No. 02–31. HERBST *v.* BROWN. C. A. 2d Cir. Certiorari denied. Reported below: 23 Fed. Appx. 84.

No. 02–32. SMITH *v.* WISE COUNTY BAIL BOND BOARD. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–33. SOCIAL COMMUNICATIONS SITES *v.* BEVAN ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 465.

No. 02–34. SOUTHWESTERN ILLINOIS DEVELOPMENT AUTHORITY *v.* NATIONAL CITY ENVIRONMENTAL, L. L. C., ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 199 Ill. 2d 225, 768 N. E. 2d 1.

No. 02–35. UPSHER ET AL. *v.* GROSSE POINTE PUBLIC SCHOOL SYSTEM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 285 F. 3d 448.

No. 02–36. SZEHINSKYJ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 277 F. 3d 331.

No. 02–37. STEEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 276 F. 3d 582.

No. 02–38. RYAN ET AL. *v.* UNION PACIFIC RAILROAD CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 456.

No. 02–40. GRECCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 817.

No. 02–41. PROVOST UMPHREY LAW FIRM ET AL. *v.* COFFMAN. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 705.

No. 02–43. STEW LEONARD'S *v.* VENEMAN, SECRETARY OF AGRICULTURE. C. A. 2d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 606.

No. 02–44. COR-BON CUSTOM BULLET CO. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 287 F. 3d 576.

No. 02–45. TAYLOR *v.* WIL LOU GRAY OPPORTUNITY SCHOOL ET AL. Ct. App. S. C. Certiorari denied.

No. 02–46. JBL, INC., ET AL. *v.* BOSE CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 274 F. 3d 1354.

No. 02–47. MAYOR AND CITY COUNCIL OF BALTIMORE *v.* WEST VIRGINIA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 285 F. 3d 522.

No. 02–48. KEVORKIAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 248 Mich. App. 373, 639 N. W. 2d 291.

No. 02–49. LEWIN *v.* COOKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 186.

No. 02–51. LINCOLN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–52. CONSOLIDATION COAL CO. ET AL. *v.* C. L. RITTER LUMBER CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 F. 3d 226.

No. 02–53. CARICOFE ET VIR, PERSONAL REPRESENTATIVES OF THE ESTATE OF CARICOFE *v.* MAYOR AND CITY COUNCIL OF OCEAN CITY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 62.

No. 02–55. DENNIS ET UX. *v.* CITY OF EASTON ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 777 A. 2d 1267.

No. 02–56. DEMAURO *v.* DEMAURO. Sup. Ct. N. H. Certiorari denied. Reported below: 147 N. H. 478, 794 A. 2d 112.

No. 02–57. KING ET UX. *v.* MERRILL LYNCH CREDIT CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 222.

No. 02–59. CHESHIRE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 282 F. 3d 326.

No. 02–60. DAHLSTROM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 F. 3d 1279.

No. 02–62. PARSONS *v.* POND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 25 Fed. Appx. 77.

No. 02–63. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 680.

No. 02–65. GREEN SPRING HEALTH SERVICES, INC., ET AL. *v.* PENNSYLVANIA PSYCHIATRIC SOCIETY. C. A. 3d Cir. Certiorari denied. Reported below: 280 F. 3d 278.

No. 02–67. FAVELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 697.

No. 02–68. GIULIANI *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 6 Fed. Appx. 863.

No. 02–71. 1–800–FLOWERS.COM, INC., ET AL. *v.* JAHN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 284 F. 3d 807.

No. 02–72. CARRASQUILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–74. DOWNS *v.* POTTER, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 848.

No. 02–75. TIJERINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 390.

No. 02–76. CALLENDAR *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 115, 561 S. E. 2d 113.

No. 02–78. MCLAIN ET AL. *v.* BUSH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 746.

No. 02–79. MILLER-WAGENKNECHT *v.* CITY OF MUNROE FALLS ET AL. Ct. App. Ohio, Summit County. Certiorari denied.

No. 02–80. MID-ISLAND HOSPITAL, INC., ET AL. *v.* EMPIRE BLUE CROSS AND BLUE SHIELD. C. A. 2d Cir. Certiorari denied. Reported below: 276 F. 3d 123.

No. 02–81. NADER ET AL. *v.* BLACKWELL, SECRETARY OF STATE OF OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 411.

No. 02–82. JULES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 141 Md. App. 739.

No. 02–83. GRADY ET AL. *v.* TOWN AND CITY OF MIDDLETOWN ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–84. HART *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 990.

No. 02–85. CLINKSCALE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 330.

No. 02–86. TRI COUNTY LANDFILL ASSN., INC. *v.* BRULE COUNTY, SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 641 N. W. 2d 147.

No. 02–87. ARNOLD, AKA DICKSON, AKA MONTAGUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 837.

No. 02–89. TOLLETT *v.* CITY OF KEMAH, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 285 F. 3d 357.

No. 02–91. WEISS, EXECUTOR AND TRUSTEE FOR ABT *v.* ST. PAUL FIRE & MARINE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 283 F. 3d 790.

No. 02–92. WESTINGHOUSE ELECTRIC CORP. *v.* PENNSYLVANIA WORKERS' COMPENSATION APPEAL BOARD ET AL. Commw. Ct. Pa. Certiorari denied.

No. 02–96. VEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 02–97. TOCCO ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 286 F. 3d 934.

No. 02–98. WEXLER, DBA WEXLER AND WEXLER *v.* DAVIS BOYD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 275 F. 3d 642.

No. 02–99. VALDEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 274 F. 3d 941.

No. 02–100. KOSTER *v.* MICHIGAN. Cir. Ct. Mich., Kalamazoo County. Certiorari denied.

No. 02–101. JOHN STREET LEASEHOLD, LLC *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 283 F. 3d 73.

No. 02–103. LIFE SYSTEMS, INC. *v.* LOWRY CHIROPRACTIC LIFE CENTERS, INC. Cir. Ct., City of Richmond, Va. Certiorari denied.

No. 02–105. VUKELICH *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 02–106. LORANGER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 250 Wis. 2d 198, 640 N. W. 2d 555.

No. 02–109. ALICEA *v.* UNITED STATES; and
No. 02–5442. MATIAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 287 F. 3d 609.

No. 02–110. COLLINS *v.* GREENBERG ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 3.

No. 02–113. SCATES *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 282 F. 3d 1362.

No. 02–114. GRAVITTE *v.* NORTH CAROLINA DIVISION OF MOTOR VEHICLES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 45.

No. 02–115. GREEN, INDIVIDUALLY AND AS TRUSTEE, ET AL. *v.* FUND ASSET MANAGEMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 286 F. 3d 682.

No. 02–116. GONZALEZ *v.* TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 02–118. OUIMETTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–119. BRYCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 F. 3d 249.

No. 02–120. MILLBROOK *v.* IBP, INC. C. A. 7th Cir. Certiorari denied. Reported below: 280 F. 3d 1169.

No. 02–122. KLOSTER CRUISE LINES N. V., DBA NORWEGIAN CRUISE LINE *v.* ESPINET ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 758 So. 2d 699.

No. 02–123. LEES *v.* EVANS, SECRETARY OF COMMERCE. C. A. Fed. Cir. Certiorari denied. Reported below: 31 Fed. Appx. 680.

No. 02–124. SIKES ET AL. *v.* AMERICAN TELEPHONE & TELEGRAPH CO. C. A. 11th Cir. Certiorari denied. Reported below: 281 F. 3d 1350.

No. 02–128. R. M. S. Titanic, Inc. *v.* The Wrecked and Abandoned Vessel et al. C. A. 4th Cir. Certiorari denied. Reported below: 286 F. 3d 194.

No. 02–133. Memorial Medical Center *v.* Godwin et ux. Ct. App. N. M. Certiorari denied. Reported below: 130 N. M. 434, 25 P. 3d 273.

No. 02–134. Ratley *v.* City of Jacksonville. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 507.

No. 02–140. Fraser et al. *v.* Major League Soccer et al. C. A. 1st Cir. Certiorari denied. Reported below: 284 F. 3d 47.

No. 02–141. Giannetti et al. *v.* Pruzinsky. C. A. 6th Cir. Certiorari denied. Reported below: 282 F. 3d 434.

No. 02–142. Ross *v.* Rail Car America, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 285 F. 3d 735.

No. 02–143. International Brotherhood of Teamsters, Local Union No. 744 *v.* Anheuser-Busch, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 280 F. 3d 1133.

No. 02–146. Neill *v.* Weinstein, Administrative Judge, Circuit Court of Maryland, Montgomery County. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 148.

No. 02–147. Brost *v.* Briley, Warden. C. A. 7th Cir. Certiorari denied.

No. 02–148. Arora *v.* Board of Civil Service Commissioners et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–149. Spanish Cove Sanitation, Inc. *v.* Louisville and Jefferson County Metropolitan Sewer District. Sup. Ct. Ky. Certiorari denied. Reported below: 72 S. W. 3d 918.

No. 02–150. Chajmovicz *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 768.

No. 02–151. LaFavre et al. *v.* Kansas Department of Revenue et al. Sup. Ct. Kan. Certiorari denied.

No. 02–152. Marx *v.* Meridian Bancorp, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 645.

No. 02–153. APONTE ET AL. *v.* CALDERON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 284 F. 3d 184.

No. 02–154. SEXTON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 278 F. 3d 808.

No. 02–157. HOGAN *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 458.

No. 02–158. HOURANI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–159. FORD MARRIN ESPOSITO WITMEYER & GLESER, L. L. P. *v.* FITZGERALD. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 740.

No. 02–161. VELEZ-RUIZ *v.* TRIMBLE. C. A. 6th Cir. Certiorari denied.

No. 02–163. AMERICAN FAMILY ASSN., INC., ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 277 F. 3d 1114.

No. 02–164. BIELOMATIK LEUZE GMBH+CO. *v.* FURRY ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 882.

No. 02–166. ZENON RODRIGUEZ ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 289 F. 3d 28.

No. 02–169. GOLDEN PEANUT CO. *v.* BASS ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 145, 563 S. E. 2d 116.

No. 02–170. GUIDICE *v.* UNITED STATES; and
No. 02–5466. IACOBELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 21.

No. 02–171. HALL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 56 M. J. 432.

No. 02–173. BERTHELOT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 839.

No. 02–175. CRISSMAN ET UX. *v.* DOVER DOWNS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 289 F. 3d 231.

No. 02–176. CROUCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 288 F. 3d 907.

No. 02–178. BARBOZA *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 54 Mass. App. 99, 763 N. E. 2d 547.

No. 02–184. ANDERSON, DBA M. X. EXPRESS *v.* INDIANA DEPARTMENT OF STATE REVENUE. Tax Ct. Ind. Certiorari denied. Reported below: 758 N. E. 2d 597.

No. 02–186. EVANS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 31.

No. 02–192. LUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 461.

No. 02–208. CARLSON *v.* GENERAL ELECTRIC CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 481.

No. 02–211. IRALA *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 68 Conn. App. 499, 792 A. 2d 109.

No. 02–212. GREEN ET AL. *v.* CBS BROADCASTING INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 286 F. 3d 281.

No. 02–221. MONTALBAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 810 So. 2d 1106.

No. 02–224. KNOX *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 673.

No. 02–225. LERMAN *v.* ARI, ACTING DIRECTOR, NEW JERSEY DIVISION OF MOTOR VEHICLES. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 654.

No. 02–229. EQUALS INTERNATIONAL, LTD. *v.* SCENIC AIRLINES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 532.

No. 02–231. XIANGYUAN ZHU *v.* BUNTING ET AL. Ct. App. Kan. Certiorari denied. Reported below: 30 Kan. App. 2d ——, 40 P. 3d 342.

No. 02–232. RUNYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 F. 3d 223.

No. 02–233. NHAN KHIEM TRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–237. CIESZKOWSKA *v.* NATIONAL LABOR RELATIONS BOARD, OFFICE OF GENERAL COUNSEL. C. A. 2d Cir. Certiorari denied.

No. 02–238. HICKMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–239. GRANT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 31 Fed. Appx. 684.

No. 02–250. CLARK *v.* MINETA, SECRETARY OF TRANSPORTATION, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–256. FREY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 02–270. DODSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 153.

No. 02–284. SMITH *v.* RIGG. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 398.

No. 02–294. MOISES, AKA ALPHA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 644.

No. 02–301. NGUYEN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 F. 3d 1112.

No. 02–303. CUNNINGHAM *v.* PAIGE, SECRETARY OF EDUCATION. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 100.

No. 02–304. FERMIN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 91.

No. 02–318. OLIVARES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 292 F. 3d 196.

No. 02–326. ROLLE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 979.

No. 02–336. McIninch *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 93.

No. 02–5001. Carpa *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 271 F. 3d 962.

No. 02–5002. Puente-Vasquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 02–5003. Pinkney *v.* Ward, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 02–5004. Godfrey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 02–5005. Hopes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 286 F. 3d 788.

No. 02–5006. Hockaday *v.* Clark, Superintendent, Hoke Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 235.

No. 02–5007. Henry *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 02–5008. Greene *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 287.

No. 02–5009. Hale *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 604.

No. 02–5010. Hansley *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–5011. Griffiths *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 934.

No. 02–5012. Hunter *v.* District of Columbia Board of Parole et al. C. A. D. C. Cir. Certiorari denied.

No. 02–5013. Soto *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 102.

No. 02–5016. Barnett *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–5017. BUSBY *v.* INTERNAL REVENUE SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 969.

No. 02–5018. CONNELLY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 293.

No. 02–5020. PRYOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 02–5021. MARTINEZ-GARDUNO, AKA GARCIA-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 475.

No. 02–5022. WARIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 229.

No. 02–5023. WALLACE *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 226.

No. 02–5024. WILKINSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 390.

No. 02–5026. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5027. BENAMI-VERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 02–5028. BRIGHT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 02–5029. DENNEY *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 883.

No. 02–5030. ESTRADA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 968.

No. 02–5031. DIAZ *v.* MERCURY INSURANCE CO. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–5032. THOMAS *v.* BILBY-KNIGHT ET AL. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 52 S. W. 3d 292.

No. 02–5033. YOUNG *v.* HOUSTON CITY JAIL ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–5035. WILSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–5037. JACQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5038. ZOCHLINSKI *v.* HANDY ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–5039. ADKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 274 F. 3d 444.

No. 02–5040. SITTON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–5041. HALLGREN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 285 F. 3d 553.

No. 02–5042. FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 02–5043. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–5044. SEALED PETITIONER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 283 F. 3d 349.

No. 02–5045. TUCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–5046. MCKINNEDY *v.* DOHERTY, DIRECTOR, GREENVILLE COUNTY DETENTION CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 190.

No. 02–5048. RUIZ-VARGUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 163.

No. 02–5049. BATISTE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5050. MUELA SOLIS *v.* EVERETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 631.

No. 02–5051. PARKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5053. HERNANDEZ-ESCARSEGA *v.* MORRIS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 181.

No. 02–5054. GRIFFIN *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5055. HOETZEL *v.* FRANK. C. A. 3d Cir. Certiorari denied.

No. 02–5056. JOHNSON *v.* OHIO. Ct. App. Ohio, Clinton County. Certiorari denied.

No. 02–5057. LIEFERT *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 309 Mont. 19, 43 P. 3d 329.

No. 02–5059. WILKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 286 F. 3d 1324.

No. 02–5062. PAKTIPATT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 444.

No. 02–5063. HART *v.* AVEDOVECH. C. A. 9th Cir. Certiorari denied.

No. 02–5064. JACKSON *v.* COWAN, WARDEN. Sup. Ct. Ill. Certiorari denied. Reported below: 205 Ill. 2d 247, 793 N. E. 2d 1.

No. 02–5065. KNOWLES *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 875.

No. 02–5066. KEY *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 225.

No. 02–5067. JACKSON, AKA DEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 291.

No. 02–5068. SIMMONS *v.* TWIN CITY TOWING CO. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 02–5069. VICKERS BEY *v.* PATAKI, GOVERNOR OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 02–5070. ATWELL *v.* SMITH ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5071. MCWEE *v.* WELDON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 F. 3d 179.

No. 02–5072. MOREAU *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5073. WRIGHT *v.* DAVID, SUPERINTENDENT, GREENE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5074. WILLIAMS *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5075. SEDGWICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 345.

No. 02–5076. SHABAZZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 563.

No. 02–5077. SODER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 623.

No. 02–5078. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 286 F. 3d 1307.

No. 02–5079. ZIMMER *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–5080. WALTERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 225.

No. 02–5081. TAYLOR *v.* TURNER, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 386.

No. 02–5082. YOUNG *v.* HUGHS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 102.

No. 02–5083. BOGLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 966.

No. 02–5084. BLAJOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 1068.

No. 02–5085. GILBERT, AKA SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 236.

No. 02–5086. HANDAKAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 286 F. 3d 92.

No. 02–5087. HICKLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 947.

No. 02–5088. GIMOTTY *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 29.

No. 02–5089. ARTIS BEY *v.* BRITTON-JACKSON, WARDEN, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–5090. BRANCH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–5092. HEMMINGS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–5093. BENJAMIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 290.

No. 02–5094. BAYONA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 511.

No. 02–5095. BRACY *v.* SCHOMIG, WARDEN; and
No. 02–5098. COLLINS *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 406.

No. 02–5099. HALL *v.* MOSELY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–5100. HALL, AKA VALERIANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 357.

No. 02–5101. HOPKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 206.

No. 02–5102. BORTH *v.* WALKER ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 02–5103. BUCHANAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 785 A. 2d 1024.

No. 02–5105. BENDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–5106. CUMMINGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 281 F. 3d 1046.

No. 02–5107. DINKINS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5108. ALEXANDER *v.* SACCHET ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 246.

No. 02–5109. PHILMORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 820 So. 2d 919.

No. 02–5110. DALIA GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 504.

No. 02–5111. ROGERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–5112. GARCIA SANTOLLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 386.

No. 02–5114. ARMSTEAD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–5115. PITTMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 326 Ill. App. 3d 297, 761 N. E. 2d 171.

No. 02–5116. ALEA, FKA PASHA *v.* SIMPSON, JUDGE, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 286 F. 3d 378.

No. 02–5117. NAUSS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 785 A. 2d 1032.

No. 02–5118. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 F. 3d 1210.

No. 02–5120. TURNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 285 F. 3d 909.

No. 02–5121. WOODSON *v.* HERSHEY CHOCOLATE OF VIRGINIA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 328.

No. 02–5122. WEST *v.* HOLT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5123. NICHOLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 534.

No. 02–5124. BARNETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5125. MARTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 38 Fed. Appx. 618.

No. 02–5126. NIMROD *v.* RAY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–5127. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 253.

No. 02–5128. MOORE *v.* VANDEL, SHERIFF, FAYETTE COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied.

No. 02–5129. FORSYTHE *v.* WALTERS, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5130. GAINEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 73, 558 S. E. 2d 463.

No. 02–5131. GONZALEZ ET VIR *v.* STATE BAR OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 02–5132. SANDERS *v.* KELLY SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 29 Fed. Appx. 5.

No. 02–5133. DADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 135.

No. 02–5134. DAVIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 205 Ill. 2d 349, 793 N. E. 2d 552.

No. 02–5135. CORNISH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5136. BACALLAO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5137. CHEN BIAO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 277 F. 3d 1151.

No. 02–5138. CRISTIN, AKA STANTON *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 404.

No. 02–5139. BARRITT *v.* WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 317.

No. 02–5140. WATKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 411.

No. 02–5141. CHESHIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 335.

No. 02–5142. DIXON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 02–5143. CARTER *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 934.

No. 02–5144. CARTER *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 283 F. 3d 240.

No. 02–5145. MARTIN *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 866.

No. 02–5146. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5147. MARTIN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 178.

No. 02–5148. LATTIER-HOLMES *v.* PEOPLES STATE BANK. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 796 So. 2d 176.

No. 02–5149. JENKINS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–5150. JAIMES-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5151. MAYBERRY *v.* TARRANT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 02–5152. LANGWORTHY *v.* GOICOCHEA. Ct. Sp. App. Md. Certiorari denied.

No. 02–5153. LINSEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 723, 559 S. E. 2d 461.

No. 02–5154. JOHONOSON *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5155. LONGO *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 23 Fed. Appx. 86.

No. 02–5156. JOHNSON *v.* CEMAN. C. A. 8th Cir. Certiorari denied.

No. 02–5157. ADAMS *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (PALMER, WARDEN, REAL PARTY IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 02–5159. ALVAREZ-MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 470.

No. 02–5160. ANDERSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 79 S. W. 3d 420.

No. 02–5162. YOUTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 968.

No. 02–5163. TODD *v.* HEAD, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 02–5165. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 02–5166. TAPIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 928.

No. 02–5167. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 276 F. 3d 884.

No. 02–5168. GONZALEZ-WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 968.

No. 02–5169. VARGA *v.* BASKERVILLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 242.

No. 02–5170. MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 277 F. 3d 517.

No. 02–5171. LEWIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5173. MATTHEWS *v.* RESEARCH FOUNDATION, STATE UNIVERSITY OF NEW YORK, BUFFALO. C. A. 2d Cir. Certiorari denied.

No. 02–5174. TORRES *v.* BRILEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–5175. TOWNSEND *v.* ELLINGER ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–5176. DERDEN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 02–5177. STEELEY *v.* DEPARTMENT OF LABOR ET AL. C. A. 1st Cir. Certiorari denied.

No. 02–5178. YOUNG *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5179. CARTER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 930.

No. 02–5180. ALLEN *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 43 P. 3d 551.

No. 02–5181. MOSELEY *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Forsyth County, N. C. Certiorari denied.

No. 02–5182. STOKES *v.* LEONARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 801.

No. 02–5183. ALEVRAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–5184. BROWN *v.* FINZEL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 920.

No. 02–5186. KOK *v.* COACHELLA VALLEY UNIFIED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 453.

No. 02–5187. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 337.

No. 02–5188. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 462.

No. 02–5189. WILLIAMS *v.* BENNING, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5190. MERCEDES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 F. 3d 47.

No. 02–5191. MONTES-ESPARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 338.

No. 02–5192. HAMMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 286 F. 3d 189.

No. 02–5193. HINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 282 F. 3d 1002.

No. 02–5194. HOWARD *v.* CHICAGO TRANSIT AUTHORITY. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–5195. HUTCHERSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 769.

No. 02–5196. HAWKER *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5197. HOUSTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 386.

No. 02–5198. HARDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5199. GREENE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 02–5200. GRAY *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 283 F. 3d 917.

No. 02–5201. GENAO, AKA MARTINEZ, AKA TORRES SANDRIA, AKA SANABRIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 281 F. 3d 305.

No. 02–5202. FOSTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–5205. JACKSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5206. BERRY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5207. LEMMERER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 277 F. 3d 579.

No. 02–5208. BELETSKY *v.* BORGEN. C. A. 7th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 623.

No. 02–5209. ANDREUCCETTI ET UX. *v.* JORGENSEN, JUDGE, CIRCUIT COURT, 18TH JUDICIAL CIRCUIT OF ILLINOIS, DU PAGE COUNTY, ET AL. Sup. Ct. Ill. Certiorari denied.

No. 02–5210. MARQUEZ *v.* CITY OF ROSWELL. Ct. App. N. M. Certiorari denied.

No. 02–5211. ROBERTS *v.* CALLAHAN. C. A. 10th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 772.

No. 02–5212. ABBOTT *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. Ct. App. Ore. Certiorari denied. Reported below: 178 Ore. App. 289, 36 P. 3d 516.

No. 02–5213. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 105.

No. 02–5215. MURPHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5216. NARANJO *v.* MUNDY TOWNSHIP. Cir. Ct. Genesee County, Mich. Certiorari denied.

No. 02–5217. BLACK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5219. SEATON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 134.

No. 02–5221. COLE *v.* MOSLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5223. NELSON *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5224. POINTER *v.* PARENTS FOR FAIR SHARE. C. A. 8th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 187.

No. 02–5225. MENDEZ-GUDINO *v.* UNITED STATES; PRUDENCIO *v.* UNITED STATES; RAMIREZ-FERNANDEZ *v.* UNITED STATES; RODRIGUEZ-MANCERA *v.* UNITED STATES; and LUARGAS-VELASQUEZ, AKA VARGAS-VELASQUEZ, AKA MEZA-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389 (third and fifth cases) and 390 (first, second, and fourth cases).

No. 02–5226. BEARDEN *v.* TEXAS; and
No. 02–5227. BEARDEN *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 02–5229. MIRANDA *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 260 Conn. 93, 794 A. 2d 506.

No. 02–5231. HENRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 657.

No. 02–5232. GUERRERO-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 390.

No. 02–5233. OKAFOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–5234. PARKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 25 Fed. Appx. 72.

No. 02–5235. McDonald *v.* Illinois. Sup. Ct. Ill. Certiorari denied.

No. 02–5236. Sloan *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 83.

No. 02–5237. Parson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–5238. Potts *v.* DeWeese et al. Ct. App. Ohio, Richland County. Certiorari denied.

No. 02–5239. Arreola-Garcia, aka Garcia Arreola *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5241. Santos-Urrea *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 533.

No. 02–5242. Burley *v.* Nichelini et al. C. A. 9th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 537.

No. 02–5243. Miller *v.* Lee, Sheriff, Benton County, et al. C. A. 8th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 498.

No. 02–5244. McCoy *v.* Clark et al. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 77.

No. 02–5245. Gaither *v.* Gomez et al. C. A. 9th Cir. Certiorari denied.

No. 02–5246. Hunter *v.* Haviland, Warden. C. A. 6th Cir. Certiorari denied.

No. 02–5247. Franklin *v.* Bilbray et al. Sup. Ct. Nev. Certiorari denied.

No. 02–5249. Crawford *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 02–5250. Cheatham *v.* Anderson, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 442.

No. 02–5251. Delgado *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 407.

No. 02–5252. DAYE *v.* BRANNON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 216.

No. 02–5253. MORAN *v.* HUNT, SUPERINTENDENT, COLUMBUS CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 191.

No. 02–5254. MCCOY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5255. SPATES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 930.

No. 02–5256. SCHWARTZ *v.* DOLLAR BANK. C. A. 3d Cir. Certiorari denied.

No. 02–5257. MOORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 374.

No. 02–5258. NEVAREZ-DIAZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5259. ALVARO PRIETO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5260. PENK *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. 10th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 837.

No. 02–5261. CORDOBA *v.* BACARISSE. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 152.

No. 02–5262. ESTRADA *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5263. CORTINAS-CHAVARRIA *v.* UNITED STATES; and RUIZ-BECERRIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389.

No. 02–5264. THOMPSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 279 F. 3d 1043.

No. 02–5265. MONTES-GALEAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5266. PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 386.

No. 02–5267. CALDERON-VILLEDA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 640.

No. 02–5268. CASTILLO-LUCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–5269. MAYA-CORTEZ *v.* UNITED STATES; CADENA-SANTOS *v.* UNITED STATES; and PINEDA-CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388 (second judgment) and 389 (first and third judgments).

No. 02–5270. PEREZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–5271. HERNANDEZ-VELASQUEZ, AKA VELASQUEZ-HERNANDEZ, AKA SANCHEZ-DIONICIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5272. FAISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 534.

No. 02–5273. ORTIZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5275. WALKER *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5276. YOUNG *v.* WEIL-MCLAIN. C. A. 7th Cir. Certiorari denied.

No. 02–5277. AYERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–5279. RODRIGUEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389.

No. 02–5280. RODRIGUEZ *v.* TRISTAN. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 564.

No. 02–5281. RAMIREZ *v.* UNITED STATES; WILLIAMS *v.* UNITED STATES; RODRIGUEZ *v.* UNITED STATES; and COX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388 (first, second, and fourth judgments) and 389 (third judgment).

No. 02–5282. RAFAEL PARDO *v.* UNITED STATES; RAMIREZ-IZAGUIRRE *v.* UNITED STATES; and ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387 (first judgment), 388 (third judgment), and 389 (second judgment).

No. 02–5283. DIGGS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5284. COLON-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5285. CICCHINELLI *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5286. CHATFIELD *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 29 Kan. App. 2d ——, 32 P. 3d 1242.

No. 02–5287. ELLSWORTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 386.

No. 02–5288. HOWARD *v.* HOLT, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 02–5289. GREEN *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 02–5290. FOSTER *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5291. HUGHES *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 237.

No. 02–5292. GARCIA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5293. REYES-OLIVEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 332.

No. 02–5294. SARMIENTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–5295. STUBBS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 102.

No. 02–5296. SHORT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–5297. DIAZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 95 Cal. App. 4th 695, 115 Cal. Rptr. 2d 799.

No. 02–5298. POWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 482.

No. 02–5300. MENDEZ-MEDINA, AKA REYES-GALVAN, AKA LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5301. MOORE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 286 F. 3d 47.

No. 02–5302. MERCADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 980.

No. 02–5303. MCDONALD *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 02–5304. JACKSON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5305. MILLER *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 02–5306. MILLER *v.* BACA, SHERIFF. C. A. 9th Cir. Certiorari denied.

No. 02–5308. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 856.

No. 02–5309. HENRY *v.* AMERICAN TOYOTA ET AL. Ct. App. N. M. Certiorari denied.

No. 02–5310. HARRIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 02–5311. FLEURY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 50.

No. 02–5312. RIOS GONZALES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 165.

No. 02–5314. SHARP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 533.

No. 02–5315. MORENO RAMOS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 126.

No. 02–5316. MONTFORD *v.* MIAMI-DADE COUNTY ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5317. PERRY *v.* HUFFMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5318. CROW *v.* WACKENHUT ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–5319. ERICKSON *v.* IMMIGRATION AND NATURALIZATION SERVICE (two judgments). C. A. 11th Cir. Certiorari denied.

No. 02–5320. COUCH *v.* BURGESS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 838.

No. 02–5322. CONNER *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–5323. WILLIAMS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–5324. AFRASA *v.* DISTRICT ATTORNEY OF THE COUNTY OF DELAWARE ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5325. SIERS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 857.

No. 02–5326. HENDERSON *v.* TORRES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 342.

No. 02–5327. PAREDES-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 492.

No. 02–5328. THOMAS *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5329. ATWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 351.

No. 02–5331. OSEWE *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5332. MEKVICHITSANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–5333. KURZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–5335. KURGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5336. KENNAUGH *v.* MILLER, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 289 F. 3d 36.

No. 02–5337. SOLANO-HERRERA *v.* UNITED STATES; LAZALDE-MURILLO *v.* UNITED STATES; OROZCO-SUAZO *v.* UNITED STATES; RODRIGUEZ-MORALES *v.* UNITED STATES; and WOO-RANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–5338. SANCHEZ-VETANCUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389.

No. 02–5339. RADFORD *v.* LAMPERT, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 237.

No. 02–5340. STRINGER *v.* HEDGEPETH, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 280 F. 3d 826.

No. 02–5341. MARTINEZ SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389.

No. 02–5343. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5344. MITCHELL ET AL. *v.* MENGEL, CLERK, SUPREME COURT OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 94 Ohio St. 3d 1449, 762 N. E. 2d 368.

No. 02–5346. DIXON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5347. CARRILLO-SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 499.

No. 02–5348. ALBERTO CAVAZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 706.

No. 02–5349. EASTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–5350. PARKER *v.* PRICE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5351. SAMPLE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 326 Ill. App. 3d 914, 761 N. E. 2d 1199.

No. 02–5352. SANDS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 02–5353. RAMOS-GODINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 273 F. 3d 820.

No. 02–5354. BIEGON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 F. 3d 249.

No. 02–5355. ALVARADO-DERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–5356. BICKING *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5357. SMITH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–5358. SIMPSON *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5359. SANDERS *v.* MCDONNELL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5360. SPENCE *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 02–5361. AMADOR-MUNIZ *v.* UNITED STATES; BARRERA-MUNOZ *v.* UNITED STATES; DEL VAL PAYAN *v.* UNITED STATES; MUNOZ-CASTILLO *v.* UNITED STATES; RENE PEREZ *v.* UNITED STATES; SOLORIO-SANCHEZ *v.* UNITED STATES; and VENCES-

JAIMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389 (second and third judgments) and 390 (first, fourth, fifth, sixth, and seventh judgments).

No. 02–5362. FRAZIER, AKA MATTHEWS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 280 F. 3d 835.

No. 02–5364. GARCIA *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 899.

No. 02–5365. JONES *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 362.

No. 02–5367. HAMMONDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–5368. FENNELL *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5369. FRANKLIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5370. WRIGHT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 291 App. Div. 2d 577, 737 N. Y. S. 2d 883.

No. 02–5371. VELASQUEZ-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 389.

No. 02–5372. TUCKER *v.* HAMBRICK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 184.

No. 02–5373. ARBELO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 288 F. 3d 1262.

No. 02–5375. BIRDWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 87.

No. 02–5377. RASTEN *v.* GELBOND. C. A. 1st Cir. Certiorari denied. Reported below: 22 Fed. Appx. 29.

No. 02–5378. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5379. BARRIENTOS-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–5380. BRAZLEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 390.

No. 02–5381. TOMLIN *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 29 Kan. App. 2d ——, 37 P. 3d 47.

No. 02–5382. TAYLOR *v.* BRANTLEY, EXECUTIVE DIRECTOR, MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 130.

No. 02–5383. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 944.

No. 02–5384. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–5385. VASSELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 193.

No. 02–5386. TATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 99.

No. 02–5387. WHITE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5388. WHITT *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5389. SANDERS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–5390. REESE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–5391. ROSENKRANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5393. RICHARDSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 817 So. 2d 849.

No. 02–5394. SEARCY *v.* HIGHTOWER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5395. THOMAS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5396. WHITAKER *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 101.

No. 02–5397. ROGERS *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 02–5398. REED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–5399. SINGLETON *v.* FLOYD, SUPERINTENDENT, GLADES CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5400. ROGERS *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–5401. SIMMONS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 152.

No. 02–5402. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5403. WASHINGTON *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5404. THOMAS *v.* DOBRE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–5406. MOVSESYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 881.

No. 02–5407. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 200.

No. 02–5408. HARRIS *v.* STATE FARM LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–5409. BECKER *v.* YOUNG ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–5410. BRITTAIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 246.

No. 02–5411. RASTAFARI *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 278 F. 3d 673.

No. 02–5413. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 978.

No. 02–5414. BANDERA-ROSAS, AKA PENA ARREOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–5415. BONOLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 287 F. 3d 699.

No. 02–5416. GIEGLER *v.* HONE. Ct. App. Mich. Certiorari denied.

No. 02–5417. HARRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5418. FAULKNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5420. HILL *v.* GHEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 218.

No. 02–5421. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 957.

No. 02–5422. GIBSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–5423. FLETCHER *v.* DISTRICT OF COLUMBIA BOARD OF PAROLE ET AL. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 636.

No. 02–5424. RAMIREZ-PINA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 839.

No. 02–5425. SIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5426. SHAKOOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 261.

No. 02–5427. CALLENDER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 293.

No. 02–5428. DABNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 233.

No. 02–5429. COLES *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 103.

No. 02–5430. DRAYTON *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 432.

No. 02–5431. LEWIS *v.* CALIFORNIA (two judgments). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–5432. KIM *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–5433. LUKENS *v.* WELCH. C. A. 9th Cir. Certiorari denied.

No. 02–5434. LIPKA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–5435. FONTROY *v.* OWENS ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5436. FONTROY *v.* OWENS. C. A. 3d Cir. Certiorari denied.

No. 02–5437. FONTROY *v.* STOUT ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5438. FONTROY *v.* PETSOCK ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5439. BUFORD *v.* EMPLOYEES OF SOLANO STATE PRISON ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5440. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 909.

No. 02–5441. PARMLEE *v.* CONNECTICUT DEPARTMENT OF REVENUE SERVICES ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–5443. ANTONIO MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 208.

No. 02–5444. NWANERI *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 108.

No. 02–5445. EASTERLING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 201.

No. 02–5446. BATTEN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 534.

No. 02–5447. LONDONO-RODAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 855.

No. 02–5448. LOPEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 192.

No. 02–5449. LEGG *v.* SPRING GROVE HOSPITAL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 127.

No. 02–5450. LIGHTNER-EL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 329.

No. 02–5451. OCHOA-CEJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 486.

No. 02–5452. MCKNEELY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 952.

No. 02–5453. MORO *v.* MORO. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 02–5454. RUSSELL *v.* HICKMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 378.

No. 02–5455. RANDALL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 287 F. 3d 27.

No. 02–5456. RANDY *v.* STEPP, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–5457. SANDERS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 764 N. E. 2d 705.

No. 02–5458. RICHARD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5459. ESPINOZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 325.

No. 02–5461. DANDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 287 F. 3d 1007.

No. 02–5462. GOMEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 794.

No. 02–5463. HERRERA *v.* NEVADA. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 463.

No. 02–5464. GODINEZ-RABADAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 F. 3d 630.

No. 02–5465. FOSHEE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–5467. HERRING *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 94 Ohio St. 3d 246, 762 N. E. 2d 940.

No. 02–5468. BRAMSON *v.* BEELER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 157.

No. 02–5469. WATERFIELD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5470. TWYFORD *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 94 Ohio St. 3d 340, 763 N. E. 2d 122.

No. 02–5471. STAFFORD *v.* NORAMCO OF DELAWARE, INC. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 32.

No. 02–5472. DE LA FUENTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 390.

No. 02–5474. WORLEY *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5475. ALICEA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 287 F. 3d 609.

No. 02–5476. VOTH *v.* LAMPERT, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. Ct. App. Ore. Certiorari denied. Reported below: 180 Ore. App. 392, 44 P. 3d 624.

No. 02–5477. THOMAS *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 262 Neb. 985, 637 N. W. 2d 632.

No. 02–5478. TAYLOR *v.* EZELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 02–5479. JOHNSON *v.* CAIN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 811 So. 2d 882.

No. 02–5480. LAJARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 638.

No. 02–5481. KAPLAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 42.

No. 02–5482. BRADFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1311.

No. 02–5483. EVANS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 451.

No. 02–5484. HAYES *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 02–5485. HINTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 366.

No. 02–5486. TOODLE *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5488. IN RE MARINO PATINO. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–5489. DOWLING *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 796 So. 2d 1195.

No. 02–5490. CORELLI *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 854 So. 2d 1216.

No. 02–5491. SOTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 40.

No. 02–5492. SHANKS *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5493. EVANS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–5494. CROSSLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–5495. DAVIS *v.* COX ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–5496. COLON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 636.

No. 02–5497. TOLEDO-YIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 406.

No. 02–5498. BANKS *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 02–5499. MURRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 125.

No. 02–5500. KENLEY *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 275 F. 3d 709.

No. 02–5501. GRIFFITH *v.* GALLAGHER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 15.

No. 02–5502. GUESS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 634.

No. 02–5503. TANNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 562.

No. 02–5504. WALTON *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5505. VERETTO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 776.

No. 02–5506. MCCOLLUM *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5507. BERTHEL *v.* NEW HAMPSHIRE. C. A. 1st Cir. Certiorari denied.

No. 02–5508. ADAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5509. SHANNON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 792 A. 2d 259.

No. 02–5511. MYRICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 104.

No. 02–5512. MORGAN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 818 So. 2d 519.

No. 02–5513. VERBLE *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5515. BYRD *v.* WALLS. C. A. 7th Cir. Certiorari denied.

No. 02–5516. BAKER *v.* BROWNING. C. A. 9th Cir. Certiorari denied.

No. 02–5517. ARCENEAUX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 894.

No. 02–5519. BEALL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5520. MASSIAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 230.

No. 02–5521. YOUNG *v.* PATRICK ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–5522. COZZOLINO *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 486.

No. 02–5523. CAIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5524. ESTRADA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5525. CRINER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 294.

No. 02–5526. WILBORN *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 02–5527. CHILDS *v.* ORNELAS-NOVAK, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 364.

No. 02–5528. RODRIGUEZ DADO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–5529. CROSS *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–5530. CLARK *v.* WASHINGTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 95.

No. 02–5531. CHIMENTI *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5532. CAZARES-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 87.

No. 02–5533. CONTRERAS-ZAMORA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 453.

No. 02–5534. MARTINEZ-MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 279 F. 3d 105.

No. 02–5535. MORGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 907.

No. 02–5536. MCWAINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 F. 3d 269.

No. 02–5537. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5539. ROCA-SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 723.

No. 02–5540. ADAMS *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–5541. MILLER *v.* ABC, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–5542. VALDOVINOS RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 747.

No. 02–5544. LOGSDON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5545. LEWIS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 815 So. 2d 818.

No. 02–5546. MAURICE, AKA THOMAS, AKA RAMON, AKA HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 506.

No. 02–5547. FRITZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 810.

No. 02–5550. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 02–5553. NAGY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5554. SOTOMAYOR *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 260 Conn. 179, 794 A. 2d 996.

No. 02–5555. WHITE *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 522.

No. 02–5556. THOMAS *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–5557. STONE *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5558. STANLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5560. PEDERSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 381.

No. 02–5561. COLE *v.* LABORERS DISTRICT COUNCIL OF WESTERN PENNSYLVANIA WELFARE FUND. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 647.

No. 02–5562. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5564. LUNDBERG *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5565. MADDEN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 812 So. 2d 430.

No. 02–5566. GARRETT *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 02–5567. BARNES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 02–5568. SAENZ-MENDOZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 287 F. 3d 1011.

No. 02–5569. POULLARD *v.* TURNER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 421.

No. 02–5570. MCCARTER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–5571. ROEL HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–5572. BURCHETT *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5573. HARRIS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 02–5575. HATZFELD *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5577. BENNETT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–5578. COMBS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 819 So. 2d 791.

No. 02–5579. SLOCUM *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 757 So. 2d 1246.

No. 02–5580. STEWART *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 02–5581. SHORE *v.* FEDERAL EXPRESS CORP. C. A. 6th Cir. Certiorari denied.

No. 02–5582. AGEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 211.

No. 02–5583. BURGESS *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 02–5584. BUCHANAN *v.* TATE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5585. CRAGER *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5587. CROSS *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5590. VOHRA *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–5591. WATTLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1184.

No. 02–5592. RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5593. GROVE *v.* ERWIN, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 95 Ohio St. 3d 1434, 766 N. E. 2d 1001.

No. 02–5594. HAMELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5595. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 85.

No. 02–5596. FREY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5597. Coria Guzman *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 02–5598. Gendron *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 02–5599. Castillo-Rangel *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–5600. Davidson *v.* Luebbers, Superintendent, Potosi Correctional Center, et al. C. A. 8th Cir. Certiorari denied. Reported below: 288 F. 3d 1076.

No. 02–5602. Rolle *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 227.

No. 02–5605. White *v.* Thomas, Warden. C. A. 6th Cir. Certiorari denied.

No. 02–5606. Davis, aka Coleman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 149.

No. 02–5607. Checo *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 02–5608. Clay, aka Skalis *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 02–5609. LiCausi *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 02–5610. Bryant *v.* Yukins, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 121.

No. 02–5613. Stojetz *v.* Ohio. Ct. App. Ohio, Madison County. Certiorari denied.

No. 02–5614. Chapman *v.* Angelone, Director, Virginia Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 212.

No. 02–5616. Calderon Alred *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–5617. Blunt *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 802 A. 2d 974.

No. 02–5621. GREEN *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 02–5625. GOODMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 935.

No. 02–5628. CARABALLO-MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 1020.

No. 02–5630. ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 287 F. 3d 1034.

No. 02–5631. MCKINNEY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 74 S. W. 3d 291.

No. 02–5633. CRAVIN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5642. HERRERA-DIAZ *v.* UNITED STATES; and
No. 02–5682. GARIBAY-BALBUENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 504.

No. 02–5643. MEANS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 02–5644. AREVALO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 504.

No. 02–5647. PRESTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5652. ELLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 150.

No. 02–5653. MEJIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 568.

No. 02–5655. CARMONA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5656. VILLASENOR-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 557.

No. 02–5658. MURDOCK *v.* MICHIGAN DEPARTMENT OF TREASURY. Ct. App. Mich. Certiorari denied.

No. 02–5659. WYNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 851.

No. 02–5660. WARREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 313.

No. 02–5662. ZELLNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 332.

No. 02–5663. MACK *v.* MARTIN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 02–5666. TRUGLIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–5667. KELLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–5668. LICHTMAN *v.* NORRIS ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 784 A. 2d 287.

No. 02–5671. LINDSEY *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 02–5672. RYAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 1339.

No. 02–5674. SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 476.

No. 02–5675. SALEEM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–5677. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5678. MACK *v.* MARTIN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 02–5680. FITE *v.* HOOVER CO. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 158.

No. 02–5681. HARRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 738.

No. 02–5683. GOOSBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 89.

No. 02–5687. CEMINCHUK *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–5690. BALLEW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 823.

No. 02–5691. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 164.

No. 02–5692. WOOD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 816 So. 2d 647.

No. 02–5693. ALLEY *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 10 Fed. Appx. 897.

No. 02–5696. BROWN *v.* RHODE ISLAND. C. A. 1st Cir. Certiorari denied.

No. 02–5700. POWELL *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 674.

No. 02–5702. MORENE *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5706. HERNANDEZ-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 601.

No. 02–5708. GONZALEZ GOMEZ, AKA GERMAN-CAMPOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 159.

No. 02–5709. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5712. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 841.

No. 02–5714. GONZALES *v.* MILES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–5715. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5717. NEASE *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–5720. RANDALL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5721. RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5722. SMITH *v.* HEIMER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 293.

No. 02–5723. SLOTE *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5724. SIERRA-CARRENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5725. PARAFAN-HOMEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5730. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 109.

No. 02–5731. RUSSELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5734. BALDWIN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 214.

No. 02–5736. MELENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 502.

No. 02–5738. LONDON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 882.

No. 02–5739. MARQUEZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 291 F. 3d 23.

No. 02–5741. TAYLOR *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 02–5742. RAMIREZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 273 F. 3d 903.

No. 02–5743. RANKINS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 02–5744. CHUTE *v.* EQUIFAX CREDIT INFORMATION SERVICES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 421.

No. 02–5745. ELIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 02–5747. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–5748. BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 78.

No. 02–5751. LYONS *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 315.

No. 02–5753. RICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 509.

No. 02–5755. SPENCER *v.* THOMAS, CHAIRMAN, RAILROAD RETIREMENT BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 636.

No. 02–5758. WHITAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5759. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1083.

No. 02–5761. NOT AFRAID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 401.

No. 02–5763. LEONARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 289 F. 3d 984.

No. 02–5764. LALJI, AKA ABDUL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5767. JACK-BEY *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5768. MARTIN *v.* MILES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5770. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 67.

No. 02–5771. COOK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 F. 3d 74.

No. 02–5773. MEEKS *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5774. SAMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5776. RESENDEZ *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 50 S. W. 3d 84.

No. 02–5777. ROBINSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 816 So. 2d 623.

No. 02–5778. MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 288 F. 3d 1126.

No. 02–5779. MELVIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 43.

No. 02–5780. MARTINEZ-BORJON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–5782. KEMP *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 31.

No. 02–5783. JARRETT *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 503.

No. 02–5784. BENAVIDES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 418.

No. 02–5785. ANTHONY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 91.

No. 02–5789. POINTER *v.* ST. LOUIS UNIVERSITY SCHOOL OF LAW. C. A. 8th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 665.

No. 02–5798. LINDSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 874.

No. 02–5800. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 840.

No. 02–5803. DUPLESSIS *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 4th Cir. Certiorari denied.

No. 02–5804. WASHINGTON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 352.

No. 02–5805. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 379.

No. 02–5806. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 505.

No. 02–5811. FLORES *v.* WELBORN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–5812. GIBBONE *v.* TERHUNE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 158.

No. 02–5815. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 F. 3d 1135.

No. 02–5816. INZUNSA-TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 500.

No. 02–5817. HOWE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 116.

No. 02–5818. FLORES-VENEGAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 295.

No. 02–5820. HOOGENBOOM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5821. FOGARTY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5826. HAZEL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 632.

No. 02–5828. BARKERS-WOODE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 218.

No. 02–5830. ASHLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5833. RUIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5836. PORTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 552.

No. 02–5839. MOURAD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 289 F. 3d 174.

No. 02–5840. PURVEY *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5841. ROSALES-AGUILERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 646.

No. 02–5845. KING *v.* GARRAGHTY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–5847. RILEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5851. GOMEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 137.

No. 02–5852. HARDY *v.* HOLDER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 501.

No. 02–5855. HOPKINS *v.* ADDISON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 367.

No. 02–5857. PARTIN *v.* ROBINSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 250.

No. 02–5858. MCNEAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5859. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 390.

No. 02–5860. VELARDE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 383.

No. 02–5861. TUCKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5862. TORRE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5864. VALENZUELA-OBESO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5865. VALENZUELA-OBESO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5877. KETCHUP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5878. ARNOLDO FERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 391.

No. 02–5881. MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–5882. TIMLEY *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 387.

No. 02–5883. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 93.

No. 02–5885. BUNCH *v.* WHITE, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 173.

No. 02–5886. DARBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5887. CURRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 928.

No. 02–5893. CONAWAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 02–5896. KING *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5898. CARBAJAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 F. 3d 277.

No. 02–5899. BLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–5901. COLEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 892.

No. 02–5903. DILALLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 388.

No. 02–5904. SULLIVAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 740.

No. 02–5906. KHANG KIEN TRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 715.

No. 02–5907. DERMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–5908. WARDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 291 F. 3d 363.

No. 02–5911. HALL, AKA REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 32.

No. 02–5915. HUNT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 716.

No. 02–5916. SINGLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 968.

No. 02–5918. LOCSKAI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–5923. BLACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 767.

No. 02–5924. NIETO ZEPEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 91.

No. 02–5926. OKAGBUE-OJEKWE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 646.

No. 02–5928. MCKINNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5934. LOWE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 272.

No. 02–5935. HARRIOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 601.

No. 02–5937. FLAHARTY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 295 F. 3d 182.

No. 02–5940. TUSH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 287 F. 3d 1294.

No. 02–5942. JENNINGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 645.

No. 02–5948. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5951. WALKER *v.* ZUNKER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 625.

No. 02–5956. CANNADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 283 F. 3d 641.

No. 02–5957. RIVAS-GOMEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 588.

No. 02–5959. ESCALANTE-BETANCOURT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 22.

No. 02–5961. STEVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 257.

No. 02–5962. DONOFRIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 881.

No. 02–5964. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 957.

No. 02–5965. MARINEZ-ARELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 265.

No. 02–5966. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 15.

No. 02–5968. LOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–5969. BURNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 35 Fed. Appx. 354.

No. 02–5973. CORTEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 129.

No. 02–5974. CHILES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 140.

No. 02–5975. MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–5981. LANGFORD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–5983. MIGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 196.

No. 02–5984. MORAN-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 622.

No. 02–5985. DECARO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5986. BUSCHMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 290 F. 3d 1166 and 36 Fed. Appx. 274.

No. 02–5988. HAINES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 486.

No. 02–5990. GUZMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 380.

No. 02–5994. STANLEY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 934.

No. 02–5998. PANIAGUA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6001. DONOVAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 823.

No. 02–6004. ALI *v.* KONTEH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6005. GORDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–6011. ALEXANDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 504.

No. 02–6013. MORGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 292 F. 3d 460.

No. 02–6028. MARIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 884.

No. 02–6029. LUIS MARTINEZ, AKA VALDEZ CUELLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 879.

No. 02–6033. DENT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 398.

No. 02–6034. COOPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 185.

No. 02–6035. ROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 751.

No. 02–6036. RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 972.

No. 02–6040. YOUNG *v.* CONLEY, WARDEN; and
No. 02–6041. SAN-MIGUEL *v.* DOVE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 291 F. 3d 257.

No. 02–6045. MELECIO RODRIQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–6048. FAVELA-FAVELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 185.

No. 02–6049. GARCIA-PAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 F. 3d 1212.

No. 02–6050. GAJO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 290 F. 3d 922.

No. 02–6052. DE JESUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 558.

No. 02–6057. LLANEZ-ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 446.

No. 02–6060. CEDENO-RANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 583.

No. 02–6062. ESPINAL-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–6066. TELLO-BERNAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 632.

No. 02–6067. SANCHEZ-CERVANTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 F. 3d 664.

No. 02–6069. SALAZAR-DIMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 897.

No. 02–6071. GUADALUPE URIARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 631.

No. 02–6072. VILLELA-LUNA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 360.

No. 02–6073. ALONSO-OCHOA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 615.

No. 02–6074. BARRIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 169.

No. 02–6075. BARROZO-AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 584.

No. 02–6076. DOBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 55.

No. 02–6078. BORDA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 383.

No. 02–6080. BELLITTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 45 Fed. Appx. 134.

No. 02–6083. PIPOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6084. VALLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 292 F. 3d 678.

No. 02–6085. TEJEDA-ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 657.

No. 02–6088. WATERS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 307.

No. 02–6089. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6090. ORTEGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6093. NELSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 284 F. 3d 472.

No. 02–6094. DOUGHERTY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6096. MARTINEZ-DANIELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 588.

No. 02–6100. CHAGULA CARRILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 979.

No. 02–6102. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6103. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 936.

No. 02–6104. GARCIA-FREGOSO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 367.

No. 02–6109. POLANCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 35 Fed. Appx. 358.

No. 02–6113. BURKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 257 F. 3d 1321.

No. 02–6117. FEURTADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 812.

No. 02–6118. GARCIA-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 714.

No. 02–6119. FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 930.

No. 02–6126. LOPEZ-VILLAGOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 658.

No. 02–6127. PEATO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 861.

No. 02–6128. DIAZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 296 F. 3d 680.

No. 02–6139. CASTRO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–6143. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 862.

No. 01–1477. PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. *v.* MCI TELECOMMUNICATIONS ET AL.; and PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. *v.* MCI WORLDCOM NETWORK SERVICES, 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: 271 F. 3d 491 (first judgment); 273 F. 3d 337 (second judgment).

No. 01–1492. MYLAN PHARMACEUTICALS, INC. *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 268 F. 3d 1323.

No. 01–10744. STAFFORD *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 27 Fed. Appx. 137.

No. 02–5654. CLARK *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. Sup. Ct. Del. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 795 A. 2d 667.

No. 01–1479. GENERAL MOTORS CORP. *v.* GOODWIN. C. A. 10th Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 275 F. 3d 1005.

No. 01–1521. ISLAMIC REPUBLIC OF IRAN *v.* MCKESSON HBOC, INC., ET AL.; and

No. 01–1708. MCKESSON HBOC, INC., ET AL. *v.* ISLAMIC REPUBLIC OF IRAN. C. A. D. C. Cir. Motion of Islamic Republic of Iran for leave to file confidential documents under seal granted. Certiorari denied. Reported below: 271 F. 3d 1101.

No. 01–1601. WOODFORD, WARDEN *v.* MORRIS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 273 F. 3d 826.

No. 01–1629. MARYLAND *v.* CONYERS. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 367 Md. 571, 790 A. 2d 15.

No. 01–1755. LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* BENN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 283 F. 3d 1040.

No. 01–1774. MARYLAND *v.* DRURY. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 368 Md. 331, 793 A. 2d 567.

No. 01–1779. WOODFORD, WARDEN *v.* WAI SILVA. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 279 F. 3d 825.

No. 02–144. MASSACHUSETTS *v.* SENG. Sup. Jud. Ct. Mass. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 436 Mass. 537, 766 N. E. 2d 492.

No. 01–1607. DICO, INC. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 277 F. 3d 1012.

No. 01–1790. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY, LOCAL 38 *v.* HUBER, HUNT & NICHOLS, INC. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 282 F. 3d 746.

No. 01–1851. GARST ET AL. *v.* WAL-MART STORES, INC., ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 30 Fed. Appx. 585.

No. 01–10435. REMMERT *v.* BRESEE. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–61. JIANGSU SOPO CORP. (GROUP) LTD. *v.* BP CHEMICALS LTD. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER

took no part in the consideration or decision of this petition. Reported below: 285 F. 3d 677.

No. 02–93. ZAMAN ET AL. *v.* ATLANTIC RICHFIELD CO. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 23 Fed. Appx. 864.

No. 02–5025. GUTIERREZ *v.* FAIRMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 32 Fed. Appx. 917.

No. 02–5248. CARTWRIGHT *v.* UPJOHN CO. ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–5321. CUYLER *v.* WAL-MART STORES, INC. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–5576. HUTCHISON *v.* PETROLEUM HELICOPTERS, INC., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 33 Fed. Appx. 704.

No. 01–1648. GLOVER ET UX. *v.* STANDARD FEDERAL BANK ET AL. C. A. 8th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 283 F. 3d 953.

No. 01–1666. DUBIN ET AL. *v.* BANK OF HAWAII ET AL. C. A. 9th Cir. Motion of petitioners to consolidate case with No. 02–317, *Dubin et al.* v. *Bank of Hawaii et al.*, denied. Certiorari denied. Reported below: 26 Fed. Appx. 630.

No. 01–1685. CHAVEZ *v.* UNIVERSAL MARITIME SERVICE CORP. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 276 F. 3d 576.

No. 01–1727. NEW JERSEY ET AL. *v.* A. A. ET AL.; and
No. 02–18. A. A. ET AL. *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari before judgment denied.

No. 01–1798. BLOUGH *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari before judgment denied.

No. 01–10068. FOWLKES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of Innocence Project of the National Capital Region et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 22 Fed. Appx. 211.

No. 02–19. SCHOMIG, WARDEN, ET AL. *v.* BRACY ET AL. C. A. 7th Cir. Motion of respondent William Bracy for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 286 F. 3d 406.

No. 02–27. ALLINA HEALTH SYSTEM CORP. ET AL. *v.* UNITED STATES EX REL. MINNESOTA ASSOCIATION OF NURSE ANESTHETISTS. C. A. 8th Cir. Motion of American Hospital Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 276 F. 3d 1032.

No. 02–58. EASTERN PILOTS MERGER COMMITTEE *v.* CONTINENTAL AIRLINES, INC. C. A. 3d Cir. Motion of Allied Pilots Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 279 F. 3d 226.

No. 02–111. UNIDENTIFIED PRIVATE CITIZEN *v.* MCCLATCHY NEWSPAPERS, INC., DBA THE SACRAMENTO BEE, ET AL. C. A. 9th Cir. Motion of petitioner to appear as "Unidentified Private Citizen" and for counsel to appear as "Attorney Doe" granted. Certiorari denied. Reported below: 288 F. 3d 369.

No. 02–132. MOBIL CORP. ET AL. *v.* ADKINS ET AL. Sup. Ct. App. W. Va. Motions of Chamber of Commerce of the United States et al., Coalition for Asbestos Justice, Inc., Association of American Railroads, 3M Co., and Unofficial Committee of Select Asbestos Claimants for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 211 W. Va. 106, 563 S. E. 2d 419.

No. 02–179. MICHALS *v.* BAXTER HEALTHCARE CORP. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 289 F. 3d 402.

No. 02–5510. KING *v.* CHILDS. Ct. Sp. App. Md. Motion of Carolyn Dingwall and Delphine Jones for leave to file a brief as *amici curiae* granted. Certiorari denied.

Rehearing Denied

No. 00–9849. MELVIN *v.* KELLY SPRINGFIELD TIRE CORP., 534 U. S. 835;

No. 01–1513. KRUEGER *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, 535 U. S. 1113;

No. 01–6880. HINKLE *v.* COUNTZ ET AL., 534 U. S. 1088;

No. 01–8747. BEJARANO *v.* SMALL, WARDEN, ET AL., 535 U. S. 1059;

No. 01–8836. SMITH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, 535 U. S. 1024;

No. 01–8934. ARRENDONDO IBARRA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 535 U. S. 1063;

No. 01–9336. RED PAINT, AKA CLIFFORD *v.* NORTH DAKOTA, 535 U. S. 1115;

No. 01–9557. BATTLE *v.* ROE, WARDEN, 536 U. S. 910;

No. 01–9674. ROWSEY *v.* ESLINGER ET AL., 536 U. S. 928;

No. 01–9693. GODEK *v.* GRAYSON, WARDEN, 536 U. S. 929;

No. 01–9763. NATURALITE *v.* CIARLO ET AL., 536 U. S. 943;

No. 01–9866. TURNER *v.* PARKER, 536 U. S. 965;

No. 01–9869. REEVES *v.* ST. MARY'S COUNTY, MARYLAND, 536 U. S. 965; and

No. 01–10132. NEWSOME *v.* PHELPS MEMORIAL HOSPITAL CENTER ET AL., 536 U. S. 967. Petitions for rehearing denied.

No. 01–6737. THOMAS *v.* MCGINNIS, WARDEN, 534 U. S. 1068; and

No. 01–9764. MILES *v.* DEPARTMENT OF VETERANS AFFAIRS, 535 U. S. 1105. Motions for leave to file petitions for rehearing denied.

OCTOBER 15, 2002

Certiorari Dismissed

No. 02–5795. RASTEN *v.* NORFOLK COUNTY, MASSACHUSETTS. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–5889. EURY *v.* BELL ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 25 Fed. Appx. 207.

Miscellaneous Orders

No. 02A280 (02–523). HENDERSON ET AL. *v.* STALDER, SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS OF LOUISIANA, ET AL. C. A. 5th Cir. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–2333. IN RE DISBARMENT OF WEINSTOCK. Disbarment entered. [For earlier order herein, see 536 U. S. 975.]

No. 02M22. MELVIN *v.* UNITED STEELWORKERS OF AMERICA, LOCAL 959, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 02–39. MICREL, INC. *v.* LINEAR TECHNOLOGY CORP. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–6308. IN RE WOJNICZ;
No. 02–6470. IN RE TURNER;
No. 02–6473. IN RE LARK;
No. 02–6474. IN RE LEWIS; and
No. 02–6530. IN RE DUKES. Petitions for writs of habeas corpus denied.

No. 02–5719. IN RE FINK. Petition for writ of mandamus denied.

No. 02–5627. IN RE CUMMINGS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 02–42. FRANCHISE TAX BOARD OF CALIFORNIA *v.* HYATT ET AL. Sup. Ct. Nev. Certiorari granted.

No. 02–215. PACIFICARE HEALTH SYSTEMS, INC., ET AL. *v.* BOOK ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 285 F. 3d 971.

Certiorari Denied

No. 01–1588. BROSIUS *v.* WARDEN, UNITED STATES PENITENTIARY, LEWISBURG, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 278 F. 3d 239.

No. 01–1687. GRIFFIN *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 274 F. 3d 818.

No. 01–1695. HSIA, AKA LING *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 30 Fed. Appx. 1.

No. 01–1782. GRIFFIN *v.* SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 288 F. 3d 1309.

No. 01–10238. LAFAYETTE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–10522. WATSON *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 678.

No. 01–10649. JASIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 280 F. 3d 355.

No. 01–10665. DANIELS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 281 F. 3d 586.

No. 01–10672. ESCOBEDO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–12. LANGDON *v.* SWAIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 171.

No. 02–50. KEHOE ET AL. *v.* CRUICKSHANK. C. A. 1st Cir. Certiorari denied.

No. 02–54. COLTEC INDUSTRIES, INC. *v.* HOBGOOD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 280 F. 3d 262.

No. 02–66. CITY OF FEDERAL HEIGHTS *v.* ESSENCE, INC., DBA THE BARE ESSENCE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 285 F. 3d 1272.

No. 02–73. STUDENT LOAN FUND OF IDAHO, INC. *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 272 F. 3d 1155 and 289 F. 3d 599.

No. 02–156. HOANG *v.* UMMEL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 613.

No. 02–160. BOYD ET AL. *v.* BRUCE ET AL. Ct. App. Tenn. Certiorari denied.

No. 02–162. CLARK ET AL. *v.* STOVALL, ATTORNEY GENERAL OF KANSAS, ET AL. C. A. 10th Cir. Certiorari denied.

No. 02–172. BETH B. ET AL. *v.* VAN CLAY, SUPERINTENDENT, LAKE BLUFF SCHOOL DISTRICT #65, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 493.

No. 02–174. SULLINS *v.* LEE ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–180. MELENDREZ *v.* LOZA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 651.

No. 02–181. ROBERTS *v.* LOS ANGELES CITY FIRE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 267.

No. 02–187. JAKES, LTD., ET AL. *v.* CITY OF COATES. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 884.

No. 02–188. ADA COUNTY ET AL. *v.* WEBB ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 285 F. 3d 829.

No. 02–190. TEXAS *v.* WATKINS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 73 S. W. 3d 264.

No. 02–195. DEJULIO ET AL. *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 290 F. 3d 1291.

No. 02–198. DEMBINSKI *v.* VOUGHT AIRCRAFT INDUSTRIES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 501.

No. 02–199. LAKE ET AL. *v.* BANK ONE, N. A. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 964.

No. 02–201. MOORE *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–203. SOMMER *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 489.

No. 02–204. Pozo *v.* McCaughtry et al. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 1022.

No. 02–205. Davis *v.* Bowron et al. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 373.

No. 02–207. Consolidated Edison Company of New York, Inc., et al. *v.* Chevron U. S. A. Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 32 Fed. Appx. 588.

No. 02–210. Godwin *v.* Martin. Sup. Ct. Ala. Certiorari denied. Reported below: 852 So. 2d 209.

No. 02–213. Hower *v.* PacifiCare of California et al. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 250.

No. 02–216. Sallee et ux. *v.* Fort Knox National Bank, N. A., et al. C. A. 6th Cir. Certiorari denied. Reported below: 286 F. 3d 878.

No. 02–219. Netland *v.* Hess & Clark, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 895.

No. 02–226. Lal *v.* Borough of Kennett Square. Commw. Ct. Pa. Certiorari denied.

No. 02–230. Wiley *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 74 S. W. 3d 399.

No. 02–244. Schneider *v.* County of San Diego et al. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 877.

No. 02–245. Breen *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–248. White et al. *v.* Priest, Secretary of State of Arkansas, et al. Sup. Ct. Ark. Certiorari denied. Reported below: 348 Ark. 135 and 783, 73 S. W. 3d 572.

No. 02–276. Fran W. et vir *v.* Terry W. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 96 Cal. App. 4th 1293, 118 Cal. Rptr. 2d 42.

No. 02–286. Vickroy *v.* Schaufler. Ct. App. Ark. Certiorari denied. Reported below: 76 Ark. App. xxvi.

No. 02–288. PENNINGTON, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS ELLIOTT COUNTY JUDGE EXECUTIVE, ET AL. *v.* HELWIG ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 516.

No. 02–309. TRAVIS COUNTY LANDFILL CO., L. L. C. *v.* CITY OF AUSTIN. Sup. Ct. Tex. Certiorari denied. Reported below: 73 S. W. 3d 234.

No. 02–313. HUGH SYMONS GROUP, PLC *v.* MOTOROLA, INC. C. A. 5th Cir. Certiorari denied. Reported below: 292 F. 3d 466.

No. 02–344. WARMBRUN *v.* SAMSON, ATTORNEY GENERAL OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 02–351. RUTHERFORD ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 574.

No. 02–352. SMITH ET UX. *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. 4th Cir. Certiorari denied. Reported below: 290 F. 3d 201.

No. 02–354. COLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 153.

No. 02–357. FITZGERALD ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 636.

No. 02–372. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 863.

No. 02–378. RILEY, AS TRUSTEE OF, AND PARTICIPANT IN, THE PERFORMANCE TOYOTA, INC. 401(K) PROFIT SHARING PLAN, ET AL. *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 292 F. 3d 1334.

No. 02–394. CAMPBELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–401. HONGYING LIU-LENGYEL *v.* NEW ENGLAND MACHINERY, INC. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 945.

No. 02–5091. BARAGOSH *v.* COMMODITY FUTURES TRADING COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 278 F. 3d 319.

No. 02–5158. BOWIE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 813 So. 2d 377.

No. 02–5172. MAXWELL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 828 So. 2d 347.

No. 02–5214. BROXTON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 278 F. 3d 456.

No. 02–5274. MOLONEY, AKA MALONEY, AKA MONROE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 F. 3d 236.

No. 02–5345. EVANS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 808 So. 2d 92.

No. 02–5460. EASTERWOOD *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 361, 44 P. 3d 1209.

No. 02–5588. JOSEPH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5589. KITCHEN *v.* STIFF, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–5601. SHAW *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 448.

No. 02–5603. SOSA *v.* MCKEE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 963.

No. 02–5604. WARD *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 191.

No. 02–5611. PUGH *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–5612. SMITH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 95 Ohio St. 3d 127, 766 N. E. 2d 588.

No. 02–5615. SCOON *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 02–5618. FULLER *v.* WELTON. C. A. 11th Cir. Certiorari denied.

No. 02–5620. IVY *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–5622. FORSYTHE *v.* WALTERS, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 734.

No. 02–5623. FATIR *v.* THOMAS ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5624. HARRIS *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 02–5626. CUESTA *v.* WATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 358.

No. 02–5629. DRAYTON *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 587.

No. 02–5634. PENDER *v.* UNION COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 223.

No. 02–5635. RUST *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–5637. ROBINSON *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 02–5638. RIVERS *v.* PATOKA. Super. Ct. Pa. Certiorari denied.

No. 02–5639. STULTS *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 02–5640. IVEY *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 718.

No. 02–5641. GLEBOCKI *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 149.

No. 02–5645. TAYLOR *v.* TAYLOR. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 02–5646. WRIGHT *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–5649. MCCARTNEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5650. RIDDLE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 713.

No. 02–5657. VELASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–5661. WALKER *v.* SPILLER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 649.

No. 02–5669. LAMBERT *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–5670. JAMESON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–5673. RENFRO *v.* SCOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 413.

No. 02–5676. BONDS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 851 So. 2d 634.

No. 02–5679. JOHNSON *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–5685. PULLUM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–5686. GREEN *v.* UNION FOUNDRY CO. C. A. 11th Cir. Certiorari denied. Reported below: 281 F. 3d 1229.

No. 02–5689. EL-MOSALAMY *v.* LOMA LINDA UNIVERSITY MEDICAL CENTER; and EL-MOSALAMY *v.* SAN JOAQUIN GENERAL HOSPITAL. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 476 (second judgment) and 480 (first judgment).

No. 02–5694. WALLACE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–5695. WILLIAMS *v.* ANDREWS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5697. MILLAY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 787 A. 2d 129.

No. 02–5699. TORRES *v.* ARMSTRONG. C. A. 2d Cir. Certiorari denied.

No. 02–5703. JOHNSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5704. ALLISON *v.* BARRETT, SHERIFF, FULTON COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 994.

No. 02–5705. GALARZA-SOTO *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–5707. HARRIS *v.* GRUBMAN ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–5710. HOFFMAN *v.* BLAINE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5711. FORD *v.* ATTORNEY GENERAL OF ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 921.

No. 02–5713. WEAVER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–5716. PILARSKI *v.* DAVIS. C. A. 7th Cir. Certiorari denied.

No. 02–5718. DELGADO *v.* PUERTO RICAN FAMILY INSTITUTE. C. A. 2d Cir. Certiorari denied.

No. 02–5726. TJART *v.* SMITH BARNEY, INC., ET AL. Ct. App. Wash. Certiorari denied. Reported below: 107 Wash. App. 885, 28 P. 3d 823.

No. 02–5727. SMITH *v.* MIRO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 169.

No. 02–5729. SKINNER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–5732. BROWN *v.* BATTLES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–5737. BURROUGHS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5740. WILLIAMS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 923.

No. 02–5756. WINKE *v.* IOWA DISTRICT COURT FOR LEE COUNTY ET AL. Sup. Ct. Iowa. Certiorari denied.

No. 02–5757. WINKE *v.* IOWA DISTRICT COURT FOR LEE COUNTY ET AL. Sup. Ct. Iowa. Certiorari denied.

No. 02–5760. BURNS *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5762. MITCHELL *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 397.

No. 02–5765. LEE *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 148 N. C. App. 518, 558 S. E. 2d 883.

No. 02–5769. LONG *v.* KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–5772. DIXON *v.* KEANE, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 293 F. 3d 74.

No. 02–5775. RAMELORIC *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 788 A. 2d 1032.

No. 02–5786. RUSSELL *v.* MISSISSIPPI DEPARTMENT OF CORRECTIONS. Sup. Ct. Miss. Certiorari denied. Reported below: 814 So. 2d 802.

No. 02–5788. STONE *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 02–5790. NETHERLY *v.* GALAZA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 7.

No. 02–5791. ABRASS *v.* WHITE. C. A. 11th Cir. Certiorari denied.

No. 02–5792. ALFONSO SALAZAR *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 02–5793. BRIGHT *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 136.

No. 02–5794. STEVENSON *v.* ST. LUKE'S HOSPITAL ET AL. Sup. Ct. Idaho. Certiorari denied.

No. 02–5797. ABBONDANZO *v.* HEALTH MANAGEMENT SYSTEMS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 3.

No. 02–5799. PECORARO *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 439.

No. 02–5801. MOONEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–5808. WILSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 149 N. C. App. 233, 562 S. E. 2d 304.

No. 02–5809. GARRETT *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5810. GUNDY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 296.

No. 02–5813. GREENE *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–5819. GASTON *v.* TAYLOR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5824. MICHAEL *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 02–5825. BAY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5831. SMITH *v.* WELLS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 90.

No. 02–5832. ROBERSON *v.* RICHARDS ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–5834. SMITH *v.* LAS VEGAS METROPOLITAN POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 427.

No. 02–5835. RANKIN *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–5837. MORRISON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 818 So. 2d 432.

No. 02–5838. MOORE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 02–5843. JIMENEZ *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 158.

No. 02–5846. BARSTAD *v.* LAMBERT. C. A. 9th Cir. Certiorari denied.

No. 02–5848. SANPHILLIPPO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5849. ATWELL *v.* DURAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 276 F. 3d 575.

No. 02–5850. CARBIN *v.* MOORE, ATTORNEY GENERAL OF MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 02–5853. FORD *v.* PAGE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–5854. HENSLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 281 F. 3d 1208.

No. 02–5856. GALVAN *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 02–5866. VERRETT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5867. THOMAS *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 02–5868. WARD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5869. WIDMER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 816 So. 2d 615.

No. 02–5870. WILLIAMS-BEY *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 649.

No. 02–5871. WALKUP *v.* ERIE INSURANCE PROPERTY & CASUALTY CO. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 611.

No. 02–5872. THOMPSON *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–5873. THOMPSON *v.* MARCHAND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 649.

No. 02–5874. TUCKER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5875. WIIDEMAN *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied.

No. 02–5876. WIIDEMAN *v.* NEIDERT. C. A. 9th Cir. Certiorari denied.

No. 02–5879. NOONER *v.* DICKEY ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–5880. WHITT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 854 So. 2d 1216.

No. 02–5884. TAYLOR *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5890. BECKWITH *v.* COMMUNICATIONS WORKERS OF AMERICA. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 501.

No. 02–5891. ALVARO PRIETO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–5894. EDMOND *v.* ANDERSON ET AL. Ct. App. Miss. Certiorari denied. Reported below: 820 So. 2d 1.

No. 02–5910. SIMS *v.* HICKMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 357.

No. 02–5925. BOOTH-EL *v.* NUTH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 288 F. 3d 571.

No. 02–5929. PABST *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 658, 44 P. 3d 1230.

No. 02–5939. ZHARN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 225.

No. 02–5946. SMITH *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD. C. A. 3d Cir. Certiorari denied.

No. 02–5949. ROGERS *v.* BECK, SUPERINTENDENT, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 81.

No. 02–5950. WATSON *v.* LUCKETT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 221.

No. 02–5963. JOHNS *v.* KYLER, SUPERINTENDENT, HUNTINGDON CORRECTIONAL INSTITUTION. C. A. 3d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 495.

No. 02–5971. TRAVIS *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 486.

No. 02–5978. MURPHY *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5979. MILLINES *v.* AJIBADE, MEDICAL DIRECTOR, MEN'S STATE PRISON. C. A. 11th Cir. Certiorari denied.

No. 02–5987. GRAVES *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 521.

No. 02–5991. HALPIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 02–5999. PEOPLES *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 73 S. W. 3d 730.

No. 02–6000. PINA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–6002. ROYSDEN *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 128.

No. 02–6019. SMITH *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6023. LUCK *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 105.

No. 02–6025. BRUNNER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 816 So. 2d 638.

No. 02–6031. KING *v.* FIRST AMERICAN INVESTIGATIONS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 287 F. 3d 91.

No. 02–6038. WESLIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 34 Fed. Appx. 815.

No. 02–6042. AZEEZ *v.* KIRBY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 138.

No. 02–6053. NELLOMS, AKA NELLONS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 63 S. W. 3d 887.

No. 02–6055. JONES *v.* HEAD, WARDEN, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 02–6056. KING *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 790 So. 2d 477.

No. 02–6087. VAPNE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 670.

No. 02–6092. THOMAS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–6095. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 328 Ill. App. 3d 879, 767 N. E. 2d 511.

No. 02–6098. KNIGHT *v.* YORK, SUPERINTENDENT, ALBEMARLE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 118.

No. 02–6105. BROWN *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–6106. SCHWENGER *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 523.

No. 02–6115. CANTRELL *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 36 Fed. Appx. 651.

No. 02–6124. CONTEH *v.* KANDARIAN. C. A. D. C. Cir. Certiorari denied.

No. 02–6125. MORA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 293 F. 3d 1213.

No. 02–6132. BENNAFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 287 F. 3d 320.

No. 02–6142. REYES-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 586.

No. 02–6144. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 151.

No. 02–6146. LONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 458.

No. 02–6147. DeVAUGHN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 60.

No. 02–6148. COCHRAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 863.

No. 02–6150. PICKARD *v.* UNITED STATES; and
No. 02–6183. BATES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 104.

No. 02–6156. ALBRIGHT *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 811, 46 P. 3d 1167.

No. 02–6157. BEATON-PAEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 285 F. 3d 1010.

No. 02–6158. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–6160. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 820.

No. 02–6161. ENRIQUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 118.

No. 02–6164. HERNANDEZ-SALGADO, AKA SALGADO, AKA HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 88.

No. 02–6165. GABRIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 295 F. 3d 880.

No. 02–6166. GERVAIS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 321 Ill. App. 3d 1059, 797 N. E. 2d 248.

No. 02–6167. HAGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 288 F. 3d 136.

No. 02–6168. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 687.

No. 02–6169. HART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 F. 3d 1084.

No. 02–6172. O'DONNELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 28 Fed. Appx. 67.

No. 02–6174. MARIANI *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6175. LANCASTER *v.* MONETTE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 315.

No. 02–6176. JUSTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 936.

No. 02–6178. NUNEZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 696.

No. 02–6179. PATEL *v.* MORRIS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 428.

No. 02–6181. ROBINSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 386.

No. 02–6185. BARBA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 919.

No. 02–6197. VELASQUEZ *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 801 A. 2d 72.

No. 02–6198. DOGANIERE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6200. BROADNAX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 500.

No. 02–6203. ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 135.

No. 02–6211. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6212. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 197.

No. 02–6214. CRISTOBAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 134.

No. 02–6219. SCHEETZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 175.

No. 02–6222. LOGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 256.

No. 02–6224. TANAKA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 515.

No. 02–6227. COLON-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–6231. SANTANA-MENDOZA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 29 Fed. Appx. 613.

No. 02–6232. BOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–6233. LOSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 105.

No. 02–6242. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 884.

No. 02–6244. HARMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 363.

No. 02–6246. STOKES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 964.

No. 02–6253. PADILLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 695.

No. 02–6256. VARELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 490.

No. 02–6257. ZEPEDA-ARMENTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 315.

No. 02–6259. ESTRADA-RENDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 478.

No. 02–6260. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 883.

No. 02–6261. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–6263. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 520.

No. 02–6266. MALAGON-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6268. McCormick *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 212.

No. 02–6270. Quinones *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 462.

No. 02–6271. Subhan *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 89.

No. 02–6272. Sykes *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 292 F. 3d 495.

No. 02–6275. Brooks, aka Mendoza, aka Martin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 175.

No. 02–6276. Aleman-Alvarez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–6278. Blount *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 886.

No. 02–6279. Ramirez-Flores *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 694.

No. 02–6280. Acevedo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 285 F. 3d 1010.

No. 02–6282. Verduzco-Higuera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 621.

No. 02–6283. Vong *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 466.

No. 02–6286. Rossi *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 968.

No. 02–6291. Reeves *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 68.

No. 02–6292. Van Dam *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 461.

No. 02–6306. King *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 280 F. 3d 886.

No. 02–6307. Jones *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 150.

No. 02–6319. FLOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 829.

No. 02–6324. HENSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 263.

No. 02–6326. HESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 287 F. 3d 1355.

No. 02–6328. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 855.

No. 02–6333. GIL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 468.

No. 02–6334. URIEL IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 927.

No. 02–6335. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 926.

No. 02–6337. GARLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 651.

No. 02–6341. ROJAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 855.

No. 02–6342. AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 295 F. 3d 1018.

No. 02–5684. NICHOLAS *v.* WEST VIRGINIA ET AL. Cir. Ct. Kanawha County, W. Va. Motion of petitioner for leave to file Appendix A under seal granted. Certiorari denied.

No. 02–5754. CARTER *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 33 Fed. Appx. 308.

No. 02–5917. KAHVEDZIC *v.* REPUBLIC OF CROATIA ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 31 Fed. Appx. 930.

Rehearing Denied

No. 01–8294. WORSHAM *v.* MINYARD FOOD STORES, INC., 535 U. S. 998;

No. 01–9233. BAILEY *v.* HEMPEN ET AL., 535 U. S. 1102;

No. 01–9364. STEEL *v.* COURT OF CRIMINAL APPEALS OF TEXAS, 535 U. S. 1115;

No. 01–9649. COLON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 536 U. S. 927; and

No. 01–9975. JACKSON-BEY *v.* UNITED STATES, 535 U. S. 1120. Petitions for rehearing denied.

OCTOBER 21, 2002

Certiorari Granted—Vacated and Remanded

No. 01–10374. RUCKER *v.* POTTER, POSTMASTER GENERAL, ET AL. 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 *Swierkiewicz* v. *Sorema N. A,* 534 U. S 506 (2002). Reported below: 31 Fed. Appx. 420.

Miscellaneous Orders

No. D–2187. IN RE DISBARMENT OF RISKER. Disbarment entered. [For earlier order herein, see 530 U. S. 1294.]

No. 02M23. MILLER *v.* WOLVERINE TUBE INC.;

No. 02M24. TAYLOR *v.* DICKEL ET AL.;

No. 02M25. GRUBER *v.* UNITED STATES;

No. 02M26. HILL *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA; and

No. 02M27. SELLAN *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01–1120. MEYER *v.* HOLLEY ET AL. C. A. 9th Cir. [Certiorari granted, 535 U. S. 1077.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1231. CONNECTICUT DEPARTMENT OF PUBLIC SAFETY ET AL. *v.* DOE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 2d Cir. [Certiorari granted, 535

U. S. 1077.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–9094. ABDUR'RAHMAN *v.* BELL, WARDEN. C. A. 6th Cir. [Certiorari granted, 535 U. S. 1016.] Motion of respondent and Alabama, as *amicus curiae,* for divided argument and for leave to participate in oral argument as *amicus curiae* granted.

No. 01–10864. HITT *v.* KANSAS. Sup. Ct. Kan. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–6540. IN RE PATTERSON;
No. 02–6557. IN RE LARKIN;
No. 02–6570. IN RE MCDONALD;
No. 02–6584. IN RE QUARY;
No. 02–6587. IN RE BROOKS; and
No. 02–6607. IN RE COHEN. Petitions for writs of habeas corpus denied.

No. 01–10009. IN RE STANFORD. Petition for writ of habeas corpus denied.

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

Petitioner has filed an application for an original writ of habeas corpus asking us to hold that his execution would be unconstitutional because he was under the age of 18 when he committed his offense. A bare majority of the Court rejected that submission 13 years ago. *Stanford* v. *Kentucky*, 492 U. S. 361 (1989). There are no valid procedural objections to our reconsideration of the issue now, and, given our recent decision in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), we certainly should do so.

In *Atkins*, we held that the Constitution prohibits the application of the death penalty to mentally retarded persons. The reasons supporting that holding, with one exception, apply with equal or greater force to the execution of juvenile offenders. The exception—the number of States expressly forbidding the execution of juvenile offenders (28) is slightly fewer than the number forbidding the execution of the mentally retarded (30)—does not justify disparate treatment of the two classes. Indeed, the fact that

since 1989, state legislatures in Indiana,[1] Montana,[2] New York,[3] and Kansas,[4] and the Supreme Court of the State of Washington[5] have all forbidden the execution of persons who were under 18 at the time of their offenses minimizes the significance of that exception.

Rather than repeating the reasoning in our opinion in *Atkins*, I think it appropriate to quote the following comments from Justice Brennan's dissenting opinion in *Stanford* v. *Kentucky*, 492 U. S., at 394–396, which I joined in 1989:

> "Proportionality analysis requires that we compare 'the gravity of the offense,' understood to include not only the injury caused, but also the defendant's culpability, with 'the harshness of the penalty.' *Solem* [v. *Helm*, 463 U. S. 277, 292 (1983)]. In my view, juveniles so generally lack the degree of responsibility for their crimes that is a predicate for the constitutional imposition of the death penalty that the Eighth Amendment forbids that they receive that punishment.
>
> "Legislative determinations distinguishing juveniles from adults abound. These age-based classifications reveal much about how our society regards juveniles as a class, and about societal beliefs regarding adolescent levels of responsibility. See *Thompson* [v. *Oklahoma*, 487 U. S. 815, 823–825 (1988) (plurality opinion)].
>
> "The participation of juveniles in a substantial number of activities open to adults is either barred completely or significantly restricted by legislation. All States but two have a uniform age of majority, and have set that age at 18 or above. . . . No State has lowered its voting age below 18. . . . Nor does any State permit a person under 18 to serve on a jury. . . . Only four States ever permit persons below 18 to marry without parental consent. . . . Thirty-seven States have specific enactments requiring that a patient have attained 18 before she may validly consent to medical treatment. . . . Thirty-four States require parental consent before a person

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[1] See Ind. Code Ann. §§35–50–2–3, 3(b)(1)(A) (West Supp. 2002); 2002 Ind. Pub. L. 117–2002, §1.

[2] See Mont. Code Ann. §45–5–102(2) (1997); 1999 Mont. Laws, ch. 523.

[3] See N. Y. Penal Law §125.27 (West Supp. 2002).

[4] See Kan. Stat. Ann. §21–4622 (1995).

[5] See *State* v. *Furman*, 122 Wash. 2d 440, 459, 858 P. 2d 1092, 1103 (1993).

below 18 may drive a motor car. . . . Legislation in 42 States prohibits those under 18 from purchasing pornographic materials. . . . Where gambling is legal, adolescents under 18 are generally not permitted to participate in it, in some or all of its forms. . . . In these and a host of other ways, minors are treated differently from adults in our laws, which reflects the simple truth derived from communal experience that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.

" 'The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.' *Thompson*, *supra*, at 835 (plurality opinion). Adolescents 'are more vulnerable, more impulsive, and less self-disciplined than adults,' and are without the same 'capacity to control their conduct and to think in long-range terms.' Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime 7 (1978) (hereafter Task Force). They are particularly impressionable and subject to peer pressure, see *Eddings* v. *Oklahoma*, 455 U. S. 104, 115 (1982), and prone to 'experiment, risk-taking and bravado,' Task Force 3. They lack 'experience, perspective, and judgment.' *Bellotti* v. *Baird*, 443 U. S. 622, 635 (1979). See generally *Thompson*, *supra*, at 835–836, n. 43; Brief for American Society for Adolescent Psychiatry et al. as *Amici Curiae* (reviewing scientific evidence). Moreover, the very paternalism that our society shows toward youths and the dependency it forces upon them mean that society bears a responsibility for the actions of juveniles that it does not for the actions of adults who are at least theoretically free to make their own choices: 'youth crime . . . is not exclusively the offender's fault; offenses by the young represent a failure of family, school, and the social system, which share responsibility for the development of America's youth.' Task Force 7.

"To be sure, the development of cognitive and reasoning abilities and of empathy, the acquisition of experience upon which these abilities operate and upon which the capacity to make sound value judgments depends, and in general the process of maturation into a self-directed individual fully re-

> sponsible for his or her actions, occur by degrees. See, *e. g.*, G. Manaster, Adolescent Development and the Life Tasks (1977). But the factors discussed above indicate that 18 is the dividing line that society has generally drawn, the point at which it is thought reasonable to assume that persons have an ability to make, and a duty to bear responsibility for their, judgments. Insofar as age 18 is a necessarily arbitrary social choice as a point at which to acknowledge a person's maturity and responsibility, given the different developmental rates of individuals, it is in fact 'a conservative estimate of the dividing line between adolescence and adulthood. Many of the psychological and emotional changes that an adolescent experiences in maturing do not actually occur until the early 20s.' Brief for American Society for Adolescent Psychiatry et al. as *Amici Curiae* 4 (citing social scientific studies)."

Today, Justice Brennan's observations are just as forceful and correct as they were in 1989. But even if we were not convinced in 1989, we should be all the more convinced today. Indeed, when determining what legal obligations and responsibilities juveniles will be allowed to take on, the trend tends to require individuals to be older, rather than younger. See, *e. g.*, National Survey of State Laws 418–422, 478–488 (R. Leiter ed., 4th ed. 2003) (reporting that, without exception, all States now require one to be at least 18 in order to marry without parental consent and that all States now require one to be at least 18 to be the age of majority if unmarried). Neuroscientific evidence of the last few years has revealed that adolescent brains are not fully developed, which often leads to erratic behaviors and thought processes in that age group. See Supplemental Brief for Petitioner 3–5. Scientific advances such as the use of functional magnetic resonance imaging—MRI scans—have provided valuable data that serve to make the case even stronger that adolescents "'are more vulnerable, more impulsive, and less self-disciplined than adults.'" *Stanford*, 492 U. S., at 395.

Moreover, in the last 13 years, a national consensus has developed that juvenile offenders should not be executed. No State has lowered the age of eligibility to either 16 or 17 since our decision in 1989. See V. Streib, The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973–September 30, 2002, p. 7 (updated Oct. 9, 2002),

http://www.law.onu.edu/faculty/streib/juvdeath.pdf (available in Clerk of Court's case file). In fact, as I mentioned above, the movement is in exactly the opposite direction. Although it is clear that the treatment of this issue by the legislatures has led to a trend in only one direction—toward abolition of the death penalty for juvenile offenders—the fact that the legislatures are paying attention to this issue is remarkable. Juvenile offenders make up only 2% of the total population of death row and about that same percentage of the executions that are carried out. See *id.*, at 13, 4. As a result of such small numbers, one might expect that this issue would draw little public attention and even less interest from the state legislatures. But the legislatures have acted, and those actions are uniformly against the execution of those who were under 18 when they committed their offenses. This uniform treatment makes sense, too, when one considers its consistency with widely held views on the subject: The majority of Americans, when asked in 2001, indicated that juvenile offenders should not be eligible for the death penalty. See, *e. g.*, T. Smith, Public Opinion on the Death Penalty for Youths, National Opinion Research Center, Univ. of Chicago 2, 6 (Dec. 2001) (unpublished manuscript) (available in Clerk of Court's case file).

All of this leads me to conclude that offenses committed by juveniles under the age of 18 do not merit the death penalty. The practice of executing such offenders is a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice.

I would set the application for an original writ for argument and respectfully dissent from the Court's refusal to do so.

No. 02–6550. IN RE DORSEY. Petition for writ of mandamus denied.

No. 02–6431. IN RE WILSON. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 02–258. JINKS *v.* RICHLAND COUNTY, SOUTH CAROLINA. Sup. Ct. S. C. Certiorari granted. Reported below: 349 S. C. 298, 563 S. E. 2d 104.

Certiorari Denied

No. 01–1649. CHAMBER OF COMMERCE OF THE UNITED STATES *v.* LANDRUM. Sup. Ct. Miss. Certiorari denied.

No. 01–1773. COLE, TRUSTEE OF THE STANFORD FARMS TRUST *v.* SANTA BARBARA COUNTY ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–9812. ARTURO D. *v.* CALIFORNIA; and
No. 01–10107. HINGER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 60, 38 P. 3d 433.

No. 01–10070. FORD *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 306 Mont. 517, 39 P. 3d 108.

No. 01–10192. GRAYSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 806 So. 2d 241.

No. 02–107. DANIEL ET AL. *v.* SANTA BARBARA COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 288 F. 3d 375.

No. 02–108. DENBURY MANAGEMENT, INC. *v.* GOULAS ET VIR. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 390.

No. 02–220. ODOM, SECRETARY, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL. *v.* ANTRICAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 290 F. 3d 178.

No. 02–227. WILLIAMS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–234. CHEYOVICH ET UX. *v.* SAN MARINO SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 847.

No. 02–235. ALLEN *v.* TEXACO INC. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 91.

No. 02–236. BURKE ET AL. *v.* ROCHA. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 260.

No. 02–242. DE LLANO *v.* BERGLUND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 282 F. 3d 1031.

No. 02–243. CAFFREY *v.* CAFFREY. Sup. Ct. Mont. Certiorari denied. Reported below: 310 Mont. 537, 52 P. 3d 401.

No. 02–246. WALLACK MANAGEMENT CO., INC., ET AL. *v.* GOYA FOODS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 290 F. 3d 63.

No. 02–247. UBS PAINEWEBBER INC. ET AL. *v.* COHEN, EXECUTOR OF THE ESTATE OF GINSBURG. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 02–251. CARTER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 272.

No. 02–254. SCHROEDER *v.* HAMILTON SCHOOL DISTRICT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 946.

No. 02–255. $165,524.78 *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 47 S. W. 3d 632.

No. 02–257. LLOYD *v.* AMERICAN AIRLINES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 291 F. 3d 503.

No. 02–259. MONAGHAN *v.* TREBEK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 651.

No. 02–260. MILLCRAFT-SMS SERVICES, L. L. C., ET AL. *v.* UNDERWOOD, COMMISSIONER, ALABAMA DEPARTMENT OF REVENUE. Sup. Ct. Ala. Certiorari denied. Reported below: 835 So. 2d 137.

No. 02–261. NUNLEY ET AL. *v.* BANJO MOUNTAIN, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–263. BTA OIL PRODUCERS ET AL. *v.* MDU RESOURCES GROUP ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 642 N. W. 2d 873.

No. 02–264. SEELYE *v.* SUPREME COURT OF OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 02–268. OCHOA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 02–278. WALSER ET AL. *v.* HOUSING AND REDEVELOPMENT AUTHORITY FOR THE CITY OF RICHFIELD. Sup. Ct. Minn. Certiorari denied. Reported below: 641 N. W. 2d 885.

No. 02–280. Rosales et al. *v.* Kean Argovitz Resorts, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 562.

No. 02–285. Hershfield *v.* County of King George, Virginia. Sup. Ct. Va. Certiorari denied.

No. 02–290. Segura et ux. *v.* Texas Department of Human Services et al. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 87.

No. 02–331. Ellis *v.* Hutchinson, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 96.

No. 02–335. Irons *v.* Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc. Ct. App. D. C. Certiorari denied. Reported below: 797 A. 2d 1260.

No. 02–341. Mayo *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 287 F. 3d 336.

No. 02–356. Chu *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 253 Wis. 2d 666, 643 N. W. 2d 878.

No. 02–360. Farrow *v.* Potter, Postmaster General. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 391.

No. 02–365. Weber *v.* Potter, Postmaster General, et al. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 102.

No. 02–386. Ching-tsen Bien *v.* Chao, Secretary of Labor. C. A. D. C. Cir. Certiorari denied.

No. 02–393. Duke *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 292 F. 3d 414.

No. 02–395. Economou *v.* White, Secretary of the Army. C. A. 2d Cir. Certiorari denied. Reported below: 286 F. 3d 144.

No. 02–398. Cortez-Ochoa *v.* Pliler, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 2.

No. 02–408. FARROW *v.* POTTER, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 507.

No. 02–413. TAG INVESTMENTS ET AL. *v.* MATRIX PROPERTIES CORP. (three judgments). Sup. Ct. N. D. Certiorari denied. Reported below: 644 N. W. 2d 601 (first judgment); 647 N. W. 2d 706 (second judgment); 651 N. W. 2d 692 (third judgment).

No. 02–415. MEDINA VIRGEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 479.

No. 02–432. MARKOWSKI *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 02–439. KLINE *v.* INTERNAL REVENUE SERVICE. C. A. 10th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 849.

No. 02–440. SHALOM *v.* UNITED STATES; and MORDEHAI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 855.

No. 02–444. HARRIS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 56 M. J. 480.

No. 02–467. CURTIS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 294 F. 3d 841.

No. 02–483. UDOGWU ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 644.

No. 02–5113. RAMSEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 205 Ill. 2d 287, 793 N. E. 2d 25.

No. 02–5119. BROOKS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied.

No. 02–5342. BISHOP *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 812 So. 2d 934.

No. 02–5374. BURGESS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 827 So. 2d 193.

No. 02–5586. PHILLIPS *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5746. SPEARS *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 283 F. 3d 992.

No. 02–5897. COSBY *v.* CLARKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 111.

No. 02–5900. PURCELL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–5902. MCDAVIS *v.* PENNSYLVANIA STATE GOVERNOR ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5905. WATKINS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 02–5909. WILLIAMS *v.* JONES, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5912. HURST *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 819 So. 2d 689.

No. 02–5913. HALL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–5914. GARDNER *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5919. GOLDSMITH *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 02–5921. KHAN *v.* LUCAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 381.

No. 02–5927. MULDOON *v.* C. J. MULDOON & SONS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 278 F. 3d 31.

No. 02–5930. JONES, AKA HAMPTON *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 329.

No. 02–5931. BANE *v.* JOHNSON, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–5932. LAWSON *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 02–5933. KING *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 02–5936. HUSSEIN *v.* THE PIERRE HOTEL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 25 Fed. Appx. 84.

No. 02–5941. KNUTSON *v.* COUNTY OF BARNES ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 642 N. W. 2d 910.

No. 02–5943. VANDERBERG *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–5944. THOMPSON *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 289 F. 3d 1218.

No. 02–5945. SALAMANCA *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 02–5947. SUGHRUE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 302.

No. 02–5952. KING *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–5953. ARROYO *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 660.

No. 02–5954. JOHNSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–5955. CARR *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 806 So. 2d 319.

No. 02–5958. DLUHY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 288 App. Div. 2d 693, 732 N. Y. S. 2d 724.

No. 02–5967. BROWN *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 272 F. 3d 1308.

No. 02–5970. WATKINS *v.* BRADFORD, SHERIFF, LAWRENCE COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–5972. WOODRUFF *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 230.

No. 02–5977. POLLOCK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–5980. DAHLER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–5982. CHUANSHAN ZHAO *v.* CITY UNIVERSITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–5989. GRAJEDA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–5992. BROWNER *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–5993. BIRCH *v.* CARTER ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–5995. RE *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 293 F. 3d 678.

No. 02–5996. WINKER *v.* MCDONNELL DOUGLAS CORP. C. A. 8th Cir. Certiorari denied.

No. 02–5997. HILL *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Ct. Common Pleas of Georgetown County, S. C. Certiorari denied.

No. 02–6007. WALKER *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6009. COOPER *v.* ZELGOWSKI ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–6012. JOHNSON *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. C. A. 3d Cir. Certiorari denied.

No. 02–6014. PEPPER *v.* DARNELL, SECRETARY OF STATE OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 460.

No. 02–6063. DAVIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–6065. ODOMS *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 442.

No. 02–6068. ROBINSON *v.* MASSACHUSETTS; and MCGRATH *v.* MASSACHUSETTS. Sup. Ct. Jud. Mass. Certiorari denied. Reported below: 437 Mass. 1002, 768 N. E. 2d 546 (first judgment); 437 Mass. 46, 768 N. E. 2d 1075 (second judgment).

No. 02–6070. BASDEN *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 290 F. 3d 602.

No. 02–6120. HUNTER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 854 So. 2d 1217.

No. 02–6121. HAMPTON *v.* WYANT, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 296 F. 3d 560.

No. 02–6136. ELDRIDGE *v.* HEDRICK, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6137. CRAWFORD *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 02–6149. JONES *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 756, 47 P. 3d 783.

No. 02–6151. SCOTT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–6152. YOUNG *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–6162. GREENE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 608.

No. 02–6180. SANFORD *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 288 F. 3d 855.

No. 02–6187. WALKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–6192. DANIELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–6195. TODD *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 25.

No. 02–6201. STANTON *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 310 Mont. 540, 52 P. 3d 403.

No. 02–6202. QUINONEZ *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6208. POLLARD *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 290 F. 3d 1030.

No. 02–6209. MORID *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 654.

No. 02–6215. HAYES *v.* NEAL, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–6218. BECKWITH *v.* BELLSOUTH TELECOMMUNICATIONS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 854.

No. 02–6221. FIGMAN *v.* SPRINT. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 171.

No. 02–6236. MORENO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 02–6243. GENTRY *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 02–6249. WILLIAMS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 263.

No. 02–6262. EVANS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–6269. MEESE *v.* WALLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–6277. WHITED *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–6289. LIMEHOUSE *v.* RED LOBSTER. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 534.

No. 02–6294. SHARP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 533.

No. 02–6298. SIMMONS *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6301. ZULUAGA *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 53 Mass. App. 1110, 760 N. E. 2d 814.

No. 02–6312. ROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 369.

No. 02–6318. OLANIYI-OKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–6321. HUDSON *v.* PICATINNY ARSENAL, DEPARTMENT OF THE ARMY. C. A. 3d Cir. Certiorari denied. Reported below: 35 Fed. Appx. 357.

No. 02–6322. HARGROVE *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 314, 45 P. 3d 376.

No. 02–6325. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–6327. BENTLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–6330. GOIST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–6338. LEFTWICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 889.

No. 02–6339. JOST *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 735.

No. 02–6343. BLOUNT *v.* UNITED STATES; and

No. 02–6344. BLOUNT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 886.

No. 02–6345. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 89.

No. 02–6351. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 57.

No. 02–6355. MONTANO-CAMPA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 448.

No. 02–6356. JUDD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 889.

No. 02–6357. LOPEZ-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 906.

No. 02–6359. STEPHENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 293 F. 3d 959.

No. 02–6360. SAMMUT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 710.

No. 02–6363. CORTEZ-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 470.

No. 02–6364. SANGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 896.

No. 02–6367. DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 880.

No. 02–6369. RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 654.

No. 02–6371. SUDAKOV *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–6374. MARROQUIN-BORRALLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6375. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–6376. MALDONADO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6379. MERCADO-ROSALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 524.

No. 02–6380. PRECIADO-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 625.

No. 02–6381. LIVINGSTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 28 Fed. Appx. 40.

No. 02–6382. LONJOSE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 177.

No. 02–6383. PORRAS-CARDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 307.

No. 02–6388. RODRIGUEZ-LEON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 888.

No. 02–6389. STALLONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 331.

No. 02–6390. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 723.

No. 02–6391. ROSARIO-MOYA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 506.

No. 02–6393. ADDERLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 627.

No. 02–6394. BLOOMGREN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 147.

No. 02–6399. PUGH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 392.

No. 02–6400. MATHIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–6401. MURANAKA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 959.

No. 02–6404. ROBLES-VILLARREAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 474.

No. 02–6406. WHITE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 504.

No. 02–6407. REYES-VEJERANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 276 F. 3d 94.

No. 02–6408. BRIGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 291 F. 3d 958.

No. 02–6409. TURNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–6410. WHITEHURST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–6414. AMADIOHA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 Fed. Appx. 594.

No. 02–6424. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 140.

No. 02–6425. SETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 857.

No. 02–6426. NODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 877.

No. 02–6428. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 688.

No. 02–6429. BRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 898.

No. 02–6430. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 636.

No. 02–6434. GRULLON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6436. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 522.

No. 02–6437. GARDUNO-MONTOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 884.

No. 02–6439. HILLGARTNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 134.

No. 02–6440. HUGHES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 276.

No. 02–6442. GRIFFITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 284 F. 3d 338.

No. 02–6443. GASTELUM-ALMEIDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 298 F. 3d 1167.

No. 02–6444. HAUSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 822.

No. 02–6445. GRIFFITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 284 F. 3d 338.

No. 02–6446. GRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6447. GARCIA-DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 318.

No. 02–6449. FEURTADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 812.

No. 02–6451. HENDRIX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 654.

No. 02–6452. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6456. MAYNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 52.

No. 02–6460. CASAREZ-DOMINGUEZ *v.* UNITED STATES; GOMEZ-FIERRO *v.* UNITED STATES; JIMENEZ-VARGAS *v.* UNITED STATES; and SANCHEZ-VILLANUEVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6463. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 896.

No. 02–6464. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6466. MOLINA-FLORES *v.* UNITED STATES; and RAMIREZ-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–6471. ESPINOZA-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6475. RILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 533.

No. 02–6477. CERRO *v.* CERRO. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–6478. FLORENTINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 878.

No. 02–6481. FOSTER-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 528.

No. 02–6482. HURTADO-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 928.

No. 02–6485. NORIEGA-BUSTAMANTE, AKA PADILLA-MORILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 908.

No. 02–6486. MORRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 293 F. 3d 1010.

No. 02–6487. CRUZ PEDRAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 319.

No. 02–6488. ALEJO-ELIZALDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6490. MUNIZ, AKA AGUILLON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6491. PRESAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6492. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 25.

No. 02–6493. KEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 545.

No. 02–6494. MACIAS-ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6495. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6497. OCAMPO-CASTANEDA, aka GARCIA, aka CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6500. O'DONALD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–6501. SHERFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6502. REYNA-CASTONON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6503. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 319.

No. 02–6505. ELIAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 285 F. 3d 183.

No. 02–6506. WILCOX *v.* FLEMING, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 210.

No. 02–6509. ARZAGA-MURUATO *v.* UNITED STATES (Reported below: 45 Fed. Appx. 322); CABALLERO-BANDA *v.* UNITED STATES (45 Fed. Appx. 322); CALVARIO-CERNAS *v.* UNITED STATES (45 Fed. Appx. 322); GALAN-GARCIA *v.* UNITED STATES (45 Fed. Appx. 322); CARDENAS-GONZALEZ *v.* UNITED STATES (45 Fed. Appx. 321); GOMEZ-ANDRADE, aka SALINAS-FLORES *v.* UNITED STATES (45 Fed. Appx. 321); LOZOYA-ROMERO *v.* UNITED STATES (45 Fed. Appx. 321); MARTINEZ-ULLOA, aka MARTINEZ-ZULLOA, aka MARTINEZ-VENEZUELA *v.* UNITED STATES (45 Fed. Appx. 322); RIOS-FLORES *v.* UNITED STATES (45 Fed. Appx. 322); ROSALES-GARCIA, aka SANCHEZ, aka GONZALEZ-ROSALES *v.* UNITED STATES (45 Fed. Appx. 321); and RUEDA-SAENZ, aka EZQUIEL-SAENZ *v.* UNITED STATES (45 Fed. Appx. 322). C. A. 5th Cir. Certiorari denied.

No. 02–6510. DELGADO-CASTILLO *v.* UNITED STATES; ESPINOZA-MARTINEZ *v.* UNITED STATES; and SALAS-GAYTAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6511. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 978.

No. 02–6512. CASTRO-GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–6515. MONROE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 408.

No. 02–6516. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 701.

No. 02–6517. VELASQUEZ-MORGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–6519. LEONARD-BEY *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 805.

No. 02–6520. JACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 273.

No. 02–6524. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 41 Fed. Appx. 566.

No. 02–6536. ERWIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 277 F. 3d 727.

No. 02–6538. NANCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 59.

No. 02–6541. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6548. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 745.

No. 02–6549. DIXON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 38.

No. 01–1846. LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 11th Cir. Motion of American Petroleum Institute et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 276 F. 3d 1253.

No. 01–10851. OKAFOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 285 F. 3d 842.

No. 02–88. AUDIO ODYSSEY, LTD., ET AL. *v.* BRENTON FIRST NATIONAL BANK ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 286 F. 3d 498.

No. 02–265. SHAW *v.* REPLOGLE. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 22 Fed. Appx. 899.

No. 02–6008. DANIELS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 01–10868. FOSTER *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 810 So. 2d 910.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

In response to JUSTICE THOMAS' concurring opinion, I think it appropriate once again to emphasize that the denial of a petition for a writ of certiorari does not constitute a ruling on the merits. See *Knight* v. *Florida*, 528 U. S. 990 (1999) (opinion of STEVENS, J., respecting denial of petitions for writ of certiorari); *Singleton* v. *Commissioner*, 439 U. S. 940, 942–946 (1978) (opinion of STEVENS, J., respecting denial of petition for writ of certiorari).

JUSTICE THOMAS, concurring.

In the three years since we last debated this meritless claim in *Knight* v. *Florida*, 528 U. S. 990 (1999) (THOMAS, J., concurring), nothing has changed in our constitutional jurisprudence.* I

*JUSTICE BREYER notes that the Supreme Court of Canada has expressed concern over delays in the administration of the death penalty in the United States. *Post*, at 992–993 (dissenting opinion). I daresay that court would be even more alarmed were there, as Blackstone commended, only a 48-hour delay between sentence and execution. *Knight*, 528 U. S., at 990–991, n. 1 (THOMAS, J., concurring) (citing 4 W. Blackstone, Commentaries *397). In any event, JUSTICE BREYER has only added another foreign court to his list while still failing to ground support for his theory in any decision by an American court. 528 U. S., at 990. While Congress, as a *legislature*, may wish to consider the actions of other nations on any issue it likes, this Court's Eighth Amendment jurisprudence should not impose foreign moods, fads, or fashions on Americans. Cf. *Atkins* v. *Virginia*, 536 U. S. 304, 324–325 (2002) (REHNQUIST, C. J., dissenting).

therefore have little to add to my previous assessment of JUSTICE BREYER's musings. See *id.*, at 992 ("Consistency would seem to demand that those who accept our death penalty jurisprudence as a given also accept the lengthy delay between sentencing and execution as a necessary consequence").

This Court's vacatur of a death sentence because of constitutional error does not bar new sentencing proceedings resulting in a reimposition of the death penalty. Petitioner seeks what we would not grant to a death-row inmate who had suffered the most egregious of constitutional errors in his sentencing proceedings—a permanent bar to execution. Murderers such as petitioner who are not apprehended and tried suffer from the fear and anxiety that they will one day be caught and punished for their crimes—perhaps even sentenced to death. Will JUSTICE BREYER next have us consider the constitutionality of capital murder trials that occur long after the commission of the crime simply because the criminal defendants, who have evaded capture, have been so long suffering?

Petitioner could long ago have ended his "anxieties and uncertainties," *post,* at 993, by submitting to what the people of Florida have deemed him to deserve: execution. Moreover, this judgment would not have been made had petitioner not slit Julian Lanier's throat, dragged him into bushes, and then, when petitioner realized that he could hear Lanier breathing, cut his spine. 369 So. 2d 928, 929 (Fla. 1979).

JUSTICE BREYER, dissenting.

Petitioner Charles Foster has spent more than 27 years in prison since his initial sentence of death. He was sentenced to death on October 4, 1975. In 1981, five days before his scheduled execution, a Federal District Court issued a stay to permit consideration of his first federal habeas petition. This petition was temporarily successful. The Court of Appeals held that Foster's sentence was constitutionally defective because the trial court had failed to state required findings regarding mitigating factors. But four months later the court withdrew relief, saying that it had wrongly raised the question *sua sponte. Foster* v. *Strickland,* 707 F. 2d 1339, 1352 (CA11 1983).

In 1984, a second death warrant issued. The courts again stayed the execution. From 1987 to 1992, the Florida courts twice vacated Foster's sentence because the trial court had failed

properly to consider certain mitigating factors. New sentencing proceedings followed. Each time Foster was again sentenced to death. Foster's latest resentencing took place in 1993, 18 years after his initial sentence and 10 years after the Court of Appeals first found error.

Foster now asks this Court to consider his claim that his execution, following these lengthy proceedings, would violate the Constitution's prohibition of "cruel and unusual punishments." JUSTICE STEVENS and I have previously argued that the Court should hear this kind of claim. See *Lackey* v. *Texas*, 514 U. S. 1045 (STEVENS, J., respecting denial of certiorari); *Elledge* v. *Florida*, 525 U. S. 944 (1998) (BREYER, J., dissenting from denial of certiorari); *Knight* v. *Florida*, 528 U. S. 990, 993–999 (1999) (BREYER, J., dissenting from denial of certiorari). And I believe the present case presents circumstances particularly fitting for this Court's review.

For one thing, 27 years awaiting execution is unusual by any standard, even that of current practice in the United States, where the average executed prisoner spends between 11 and 12 years under sentence of death, U. S. Dept. of Justice, Bureau of Justice Statistics Bulletin, T. Snell, Capital Punishment 2000, p. 12 (Dec. 2001). A little over two years ago, there were only eight prisoners in the United States who had been under sentence of death for 24 years or more, and none who had been on death row for 27 years. *Id.*, at 13. Now we know there is at least one.

For another thing, as JUSTICE STEVENS and I have previously pointed out, the combination of uncertainty of execution and long delay is arguably "cruel." This Court has recognized that such a combination can inflict "horrible feelings" and "an immense mental anxiety amounting to a great increase of the offender's punishment." *In re Medley*, 134 U. S. 160, 172 (1890); see also *Furman* v. *Georgia*, 408 U. S. 238, 288–289 (1972) *(per curiam)* (Brennan, J., concurring) ("[T]he prospect of pending execution exacts a frightful toll"). Courts of other nations have found that delays of 15 years or less can render capital punishment degrading, shocking, or cruel. *E. g.*, *Pratt* v. *Attorney General for Jamaica*, [1994] 2 A. C. 1, 29, 33, 4 All E. R. 769, 783, 786 (P. C. 1993) (en banc) (U. K. Privy Council); *Soering* v. *United Kingdom*, 11 Eur. Ct. H. R. (ser. A), pp. 439, 478, ¶ 111 (1989) (European Court of Human Rights). See *Knight*, *supra*, at 995–996. Consistent with these determinations, the Supreme Court of Canada recently

held that the potential for lengthy incarceration before execution is "a relevant consideration" when determining whether extradition to the United States violates principles of "fundamental justice." *United States* v. *Burns*, [2001] 1 S. C. R. 283, 353, ¶ 123. Just as "attention to the judgment of other nations" can help Congress determine "the justice and propriety of [America's] measures," The Federalist No. 63, p. 382 (C. Rossiter ed. 1961) (J. Madison), so it can help guide this Court when it decides whether a particular punishment violates the Eighth Amendment. Cf. *Atkins* v. *Virginia*, 536 U. S. 304, 316–317, n. 21 (2002).

Foster has endured an extraordinarily long confinement under sentence of death, a confinement that extends from late youth to later middle age. The length of this confinement has resulted partly from the State's repeated procedural errors. Death row's inevitable anxieties and uncertainties have been sharpened by the issuance of two death warrants and three judicial reprieves. If executed, Foster, now 55, will have been punished both by death and also by more than a generation spent in death row's twilight. It is fairly asked whether such punishment is both unusual and cruel.

I would grant the petition for certiorari in this case.

No. 02–20. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MCCOY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 282 F. 3d 626.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

An Arizona jury found respondent guilty of participating in a criminal syndicate, and the trial court sentenced him to a term of 15 years' imprisonment. After his conviction was affirmed by the Arizona Court of Appeals, the Federal District Court granted his petition for a writ of habeas corpus, and the Court of Appeals for the Ninth Circuit affirmed the order releasing him from custody. The harsh sentence for a relatively minor offense provides a permissible justification for this Court's discretionary decision to deny the warden's petition for certiorari. Nevertheless, the issue raised by her petition has sufficient importance to merit comment.

The specific crime committed by respondent was giving advice to members of a street gang. In the words of the relevant Ari-

zona statute, he was guilty of: "Furnishing advice or direction in the conduct, financing or management of a criminal syndicate's affairs with the intent to promote or further the criminal objectives of a criminal syndicate."[1] The evidence showed that he had been a member of a street gang in California before moving to Arizona, and that at two social gatherings he gave several members of a Tucson gang specific advice on how to operate their gang.[2] The state appellate court concluded that the evidence was sufficient to prove his knowledge of the Tucson gang's criminal activities and his intent to promote those activities. It also rejected respondent's contention that the statute violated the First Amendment because it prohibited constitutionally protected speech.

The federal courts both concluded, however, that respondent's speech was protected by that Amendment. Relying primarily on *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969) *(per curiam)*, and *Hess* v. *Indiana*, 414 U. S. 105 (1973) *(per curiam)*, the Court of Appeals held that respondent's speech "was mere abstract advocacy" that was not constitutionally proscribable because it did not incite "imminent" lawless action.[3] Given the specific character of respondent's advisory comments, that holding is surely debatable. But whether right or wrong, it raises a most important issue concerning the scope of our holding in *Brandenburg*, for our opin-

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[1] Ariz. Rev. Stat. Ann. § 13–2308(A)(3) (West 2001).

[2] "Appellant moved to Tucson from California, where he had been a member of a gang since the 1980s. In Tucson, he became acquainted with his girlfriend's son and a number of his friends who belonged to a gang called the 'Bratz.' Several Bratz members testified that appellant was present at a barbecue at the son's house attended by a number of Bratz members and that he spoke to them about his experiences in the California gang. He advised them to formalize their gang by electing officers, collecting money to establish a bail fund for members, and spray painting more gang graffiti to make their presence known in their territory. He also advised them to 'jump in' more loyal members and 'jump out' those who were not loyal. There was testimony explaining that 'jumping' or 'courting' meant initiating a new member or removing a current member by means of a group beating in which a number of members participated in beating or kicking the person 'jumped' or 'courted.' Finally, he advised them to establish friendly relations with other gangs who would support them." *State* v. *McCoy*, 187 Ariz. 223, 224, 928 P. 2d 647, 648 (App. 1996).

[3] 282 F. 3d 626, 631 (CA9 2002).

ion expressly encompassed nothing more than "mere advocacy," 395 U. S., at 449.

The principle identified in our *Brandenburg* opinion is that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id.*, at 447. While the requirement that the consequence be "imminent" is justified with respect to mere advocacy, the same justification does not necessarily adhere to some speech that performs a teaching function. As our cases have long identified, the First Amendment does not prevent restrictions on speech that have "clear support in public danger." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). Long range planning of criminal enterprises—which may include oral advice, training exercises, and perhaps the preparation of written materials—involves speech that should not be glibly characterized as mere "advocacy" and certainly may create significant public danger. Our cases have not yet considered whether, and if so to what extent, the First Amendment protects such instructional speech. Our denial of certiorari in this case should not be taken as an endorsement of the reasoning of the Court of Appeals.

No. 02–30. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SPEARS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 283 F. 3d 992.

No. 02–262. TECHSEARCH L. L. C. *v.* INTEL CORP. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 286 F. 3d 1360.

No. 02–5313. ALDERMAN *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied. JUSTICE BREYER would grant certiorari. Reported below: 274 Ga. 761, 559 S. E. 2d 72.

Rehearing Denied

No. 01–8204. JACOBS *v.* MCCAUGHTRY, WARDEN, 535 U. S. 995; and

No. 01–10203. FUELL *v.* UNITED STATES, 536 U. S. 932. Petitions for rehearing denied.

October 24, 2002

Dismissal Under Rule 46

No. 02–470. Rodriguez-Bahena *v.* United States. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 45 Fed. Appx. 320.

Miscellaneous Order

No. 01–9094. Abdur'Rahman *v.* Bell, Warden. C. A. 6th Cir. [Certiorari granted, 535 U. S. 1016.] The parties are directed to file supplemental briefs addressing the following questions: "Did the Sixth Circuit have jurisdiction to review the District Court's order, dated November 27, 2001, transferring petitioner's Rule 60(b) motion to the Sixth Circuit pursuant to 28 U. S. C. § 1631? Does this Court have jurisdiction to review the Sixth Circuit's order, dated February 11, 2002, denying leave to file a second habeas corpus petition?" Briefs are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, October 31, 2002. Twenty copies of the briefs prepared under this Court's Rule 33.2 may be filed initially in order to meet the October 31 filing date. Rule 29.2 does not apply. Forty copies of the briefs prepared under Rule 33.1 are to be filed as soon as possible thereafter.

October 29, 2002

Miscellaneous Order

No. 02A339 (02–127). McGrath, Warden, et al. *v.* Chia. C. A. 9th Cir. Application for stay, presented to Justice O'Connor, and by her referred to the Court, granted, and it is ordered that the May 21, 2002, order of the United States District Court for the Central District of California, case No. 97–CV–51, is hereby stayed pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

November 1, 2002

Miscellaneous Order

No. 01–729. Smith et al. *v.* Doe et al. C. A. 9th Cir. [Certiorari granted *sub nom. Otte* v. *Doe,* 534 U. S. 1126.] Motion of respondents for divided argument denied.

NOVEMBER 4, 2002

Affirmed on Appeal

No. 02–200. O'LEAR ET AL. *v.* MILLER ET AL. Affirmed on appeal from D. C. E. D. Mich. JUSTICE STEVENS and JUSTICE BREYER would note probable jurisdiction and set case for oral argument. Reported below: 222 F. Supp. 2d 862.

Certiorari Granted—Reversed and Remanded. (See No. 02–29, *ante,* p. 12.)

Certiorari Granted—Reversed. (See No. 01–1765, *ante,* p. 3; and No. 02–137, *ante,* p. 19.)

Certiorari Dismissed

No. 02–6101. MOORE *v.* MISSISSIPPI. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–6190. WINKE *v.* WINKE. Sup. Ct. Iowa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–6191. WINKE *v.* IOWA DISTRICT COURT FOR LEE COUNTY. Sup. Ct. Iowa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–6228. EURY *v.* SMITH. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–6310. JOHNSON *v.* TREMPER ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.,* at 4, and cases cited therein. Reported below: 38 Fed. Appx. 665.

Miscellaneous Orders

No. 02M28. SHERRILL *v.* HOLMES-TUTTLE FORD;
No. 02M29. MOORE *v.* ARIZONA DEPARTMENT OF TRANSPORTATION/MOTOR VEHICLE DIVISION ET AL.;
No. 02M30. WILLIAMS *v.* UNITED STATES;
No. 02M31. HERZOG *v.* UNITED STATES; and
No. 02M33. BECK *v.* CURTIS, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 02M32. WALDROP *v.* DEKALB COUNTY BOARD OF EDUCATION. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 01–593. DOLE FOOD CO. ET AL. *v.* PATRICKSON ET AL.; and
No. 01–594. DEAD SEA BROMINE CO., LTD., ET AL. *v.* PATRICKSON ET AL. C. A. 9th Cir. [Certiorari granted, 536 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1418. ARCHER ET UX. *v.* WARNER. C. A. 4th Cir. [Certiorari granted, 536 U. S. 938.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1437. BRANCH ET AL. *v.* SMITH ET AL.; and
No. 01–1596. SMITH ET AL. *v.* BRANCH ET AL. D. C. S. D. Miss. [Probable jurisdiction noted, 536 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–299. ENTERGY LOUISIANA, INC. *v.* LOUISIANA PUBLIC SERVICE COMMISSION ET AL. Sup. Ct. La. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–571. PATTERSON ET AL. *v.* BOLLINGER ET AL. C. A. 6th Cir. Motion of petitioners Ebony Patterson et al. to expedite consideration of petition for writ of certiorari before judgment denied.

No. 02–6658. IN RE HEWITT;
No. 02–6701. IN RE KEYS;
No. 02–6753. IN RE CAMERON;
No. 02–6804. IN RE ALLEN; and

No. 02–6832. IN RE HARRIS. Petitions for writs of habeas corpus denied.

No. 02–6714. IN RE ADKINS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 02–6171. IN RE PORTER; and
No. 02–6718. IN RE DUNN. Petitions for writs of mandamus denied.

No. 02–325. IN RE SELYUKOV ET AL. Petition for writ of prohibition denied.

Certiorari Granted

No. 01–1806. ILLINOIS EX REL. RYAN, ATTORNEY GENERAL OF ILLINOIS *v.* TELEMARKETING ASSOCIATES, INC., ET AL. Sup. Ct. Ill. Certiorari granted. Reported below: 198 Ill. 2d 345, 763 N. E. 2d 289.

No. 02–69. ROELL ET AL. *v.* WITHROW. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 288 F. 3d 199.

No. 02–271. DOW CHEMICAL CO. ET AL. *v.* STEPHENSON ET AL. C. A. 2d Cir. Motion of Product Liability Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari granted. JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition. Reported below: 273 F. 3d 249.

No. 01–10873. NGUYEN *v.* UNITED STATES ET AL.; and
No. 02–5034. PHAN *v.* UNITED STATES. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 284 F. 3d 1086.

No. 02–5664. SELL *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Motion of Law Office of Julie Ruiz-Sierra for leave to file a brief as *amicus curiae* denied. Certiorari granted limited to the following question: "Whether the Court of Appeals erred in rejecting petitioner's argument that allowing the Government to admin-

ister antipsychotic medication against his will solely to render him competent to stand trial for nonviolent offenses would violate his rights under the First, Fifth, and Sixth Amendments?" Reported below: 282 F. 3d 560.

Certiorari Denied

No. 01–1317. ATTORNEY GENERAL OF CANADA *v.* R. J. REYNOLDS TOBACCO HOLDINGS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 268 F. 3d 103.

No. 01–1744. COUNTY OF HUMBOLDT ET AL. *v.* BURTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 276 F. 3d 1125.

No. 01–10510. LEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 274 F. 3d 485.

No. 01–10996. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–11006. VALUCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 F. 3d 221.

No. 02–15. SHELTON ET AL. *v.* CONSUMER PRODUCT SAFETY COMMISSION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 277 F. 3d 998.

No. 02–70. ROE, WARDEN *v.* LESO FERNANDEZ. C. A. 9th Cir. Certiorari denied. Reported below: 286 F. 3d 1073.

No. 02–138. CAMPBELL *v.* LYON. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 659.

No. 02–168. FOUSSELL *v.* PARKER DRILLING OFFSHORE, USA, LLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 90.

No. 02–177. ALDRIDGE ET AL. *v.* GOODYEAR TIRE & RUBBER CO., INC. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 184.

No. 02–189. MITSUBISHI HEAVY INDUSTRIES, LTD. *v.* CANTUBA ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 811 So. 2d 50.

No. 02–206. CONERY *v.* NICCOLLAI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 34 Fed. Appx. 839.

No. 02–267. MORGAN *v.* ROBINSON, CHIEF PROBATION OFFICER, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–273. SPRINT CORP., DBA SPRINT SPECTRUM L. P., ET AL. *v.* GAGNON. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 839.

No. 02–279. SAKS FIFTH AVENUE ET AL. *v.* CASHMERE & CAMEL HAIR MANUFACTURERS INSTITUTE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 284 F. 3d 302.

No. 02–291. SUMMIT FINANCIAL HOLDINGS, LTD. *v.* CONTINENTAL LAWYERS TITLE CO. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 705, 41 P. 3d 548.

No. 02–292. OULTON ET UX. *v.* WYNDHAM FOUNDATION, INC. Cir. Ct. Henrico County, Va. Certiorari denied.

No. 02–293. WILHELM *v.* BOGGS, DEPUTY SHERIFF, MAHONING COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 290 F. 3d 822.

No. 02–298. CARMENA ET AL. *v.* GEORGIA-PACIFIC CORP. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–302. BALLON *v.* ZONING HEARING BOARD OF THE BOROUGH OF WEST VIEW. Commw. Ct. Pa. Certiorari denied. Reported below: 782 A. 2d 82.

No. 02–307. WEDDELL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 206, 43 P. 3d 987.

No. 02–308. MARINO *v.* KENOFF & MACHTINGER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–310. JACOBAZZI *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 02–314. GRAY *v.* GENLYTE THOMAS GROUP, LLC. C. A. 1st Cir. Certiorari denied. Reported below: 289 F. 3d 128.

No. 02–317. DUBIN ET AL. *v.* BANK OF HAWAII ET AL.; and DUBIN ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 02–321. MACHIPONGO LAND & COAL CO., INC., ET AL. *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 799 A. 2d 751.

No. 02–328. LIPKO *v.* CHRISTIE. C. A. 2d Cir. Certiorari denied.

No. 02–329. MONTS *v.* BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE, DBA UNIVERSITY OF NEW ORLEANS, ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 812 So. 2d 787.

No. 02–333. TCI MEDIA SERVICES, GREAT NORTHWEST REGION, ET AL. *v.* COLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 342.

No. 02–334. FALLO ET UX. *v.* PICCADILLY CAFETERIAS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–339. UNANUE *v.* GOYA FOODS, INC.; and
No. 02–366. UNANUE-CASAL, AKA UNANUE *v.* GOYA FOODS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 275 F. 3d 124.

No. 02–349. ROWE *v.* CITY OF ELYRIA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 277.

No. 02–350. SALVADOR ET UX. *v.* LAKE GEORGE PARK COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 35 Fed. Appx. 7.

No. 02–353. CARRASCO *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 201 Ariz. 220, 33 P. 3d 791.

No. 02–363. BASSETT *v.* AMERICAN GENERAL FINANCE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 285 F. 3d 882.

No. 02–364. TAUBER ET AL. *v.* VIRGINIA EX REL. KILGORE, ATTORNEY GENERAL OF VIRGINIA, ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 263 Va. 520, 562 S. E. 2d 118.

No. 02–368. SOOKDEO-RUIZ *v.* GCI GROUP. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 17.

No. 02–379. ROSS *v.* FORD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 941.

No. 02–380. MIRANDA *v.* CASTRO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 1063.

No. 02–385. SMITH ET UX. *v.* BLUE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 390.

No. 02–416. WISEHART *v.* KELLWOOD CO. C. A. 2d Cir. Certiorari denied. Reported below: 34 Fed. Appx. 406.

No. 02–420. ESTATE OF HUTCHINSON ET AL., BY HUTCHINSON, PERSONAL REPRESENTATIVE *v.* MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, FKA DEPARTMENT OF NATURAL RESOURCES. Ct. App. Mich. Certiorari denied.

No. 02–441. JACKSON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–445. GILMORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 43.

No. 02–453. HORTON HOMES, INC. *v.* WHEELER. Sup. Ct. Ala. Certiorari denied. Reported below: 852 So. 2d 205.

No. 02–472. ROBINS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 253 Wis. 2d 298, 646 N. W. 2d 287.

No. 02–490. BURNS *v.* MCFADDEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 263.

No. 02–494. EDWARDS *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 107.

No. 02–503. LAYMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 904.

No. 02–513. MUELLER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 437.

No. 02–518. SPRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 848.

No. 02–535. COLE *v.* LAWS ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 349 Ark. 177, 76 S. W. 3d 878.

No. 02–538. KENDALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 938.

No. 02–5058. MENDOZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 281 F. 3d 712.

No. 02–5185. MARTIN *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 280 F. 3d 594.

No. 02–5334. MADLEY *v.* UNITED STATES PAROLE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 278 F. 3d 1306.

No. 02–5538. VISCIOTTI *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 288 F. 3d 1097.

No. 02–5548. GUAGLIARDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 278 F. 3d 868.

No. 02–5701. TIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 283 F. 3d 1246.

No. 02–6003. RIVERS *v.* AVIS CONSTRUCTION CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 284.

No. 02–6015. QADIR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 388.

No. 02–6016. STEWART *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 768 N. E. 2d 433.

No. 02–6018. RANDOLPH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6020. ROBINSON *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 954.

No. 02–6022. PEREZ *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 790 A. 2d 342.

No. 02–6024. BELTRAN *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6026. McDaniel *v.* Moore, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 292 F. 3d 1304.

No. 02–6030. Lewis *v.* Curtis, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 154.

No. 02–6032. Steele, as Guardian ad Litem for Cochran *v.* Hood River County, Oregon. Ct. App. Ore. Certiorari denied. Reported below: 178 Ore. App. 536, 39 P. 3d 291.

No. 02–6044. Prince *v.* Briley. C. A. 7th Cir. Certiorari denied.

No. 02–6046. Smith *v.* Long et al. C. A. 9th Cir. Certiorari denied.

No. 02–6047. Harlow et al. *v.* Riverside County Department of Public Social Services. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–6051. Mosley *v.* Thompson et al. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–6054. Jaubert *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 74 S. W. 3d 1.

No. 02–6059. Mann *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 294, 560 S. E. 2d 776.

No. 02–6061. Corbett *v.* McDade, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 562.

No. 02–6077. Myers *v.* Alabama. C. A. 11th Cir. Certiorari denied.

No. 02–6081. Schommer *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 02–6082. McCoy *v.* Louisiana. 4th Jud. Dist. Ct. La., Ouachita Parish. Certiorari denied.

No. 02–6086. Thompson *v.* Kelchner, Superintendent, State Correctional Institution at Muncy, et al. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 75.

No. 02–6099. DEAL *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 397.

No. 02–6107. SCHLEIGH *v.* COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY. Sup. Ct. Pa. Certiorari denied.

No. 02–6108. ROBINSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 320, 561 S. E. 2d 245.

No. 02–6110. BROWN *v.* MILWAUKEE COUNTY. Ct. App. Wis. Certiorari denied.

No. 02–6112. YATES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–6116. SCIBILIA *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6123. YEKIMOFF *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 296 App. Div. 2d 873, 746 N. Y. S. 2d 621.

No. 02–6129. PEARSON *v.* FINN ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6130. PAYNE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6131. PRITCHETT *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–6133. TINSLEY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–6134. BROADES *v.* POPPELL, WARDEN, ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 02–6138. CENTOBENE *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1366.

No. 02–6145. BOONE *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 60 S. W. 3d 231.

No. 02–6153. TAYLOR *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 288 F. 3d 846.

No. 02–6154. THOMAS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 97.

No. 02–6155. DAVIS *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6159. MORRISON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 02–6173. LAPE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6177. JOHNSON *v.* TOLLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 387.

No. 02–6182. LYONS *v.* BATTLES, WARDEN. Super. Ct. Hancock County, Ga. Certiorari denied.

No. 02–6184. CRUTCHER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 02–6186. WIDELL ET AL. *v.* CITY OF BREMERTON, WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 146 Wash. 2d 561, 51 P. 3d 733.

No. 02–6188. NORMAND *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied.

No. 02–6189. PRICE *v.* DEPARTMENT OF JUVENILE JUSTICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 939.

No. 02–6193. WINKE *v.* WINKE. Sup. Ct. Iowa. Certiorari denied.

No. 02–6194. WORLEY *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 72.

No. 02–6196. OBADELE, AKA BEN-YAHWEH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6199. TUCKER *v.* KARBER ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–6204. SNYDER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 854 So. 2d 1227.

No. 02–6205. RUSSELL *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6206. RODRIGUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–6210. LACOUR *v.* OKLAHOMA (two judgments). Ct. Crim. App. Okla. Certiorari denied.

No. 02–6213. SAUVE *v.* METHODIST HOSPITAL. C. A. 8th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 248.

No. 02–6216. GLYNN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 787 So. 2d 203.

No. 02–6217. BLAY *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 02–6220. ROBLES *v.* THOMPSON, SUPERINTENDENT, COLUMBIA RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 02–6223. RICHARDSON *v.* NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 28 Fed. Appx. 69.

No. 02–6225. WATSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6226. WESLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–6238. WARREN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 41 Fed. Appx. 408.

No. 02–6241. FITZGERALD *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 292 F. 3d 500.

No. 02–6245. BELL *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 321 Ill. App. 3d 1072, 797 N. E. 2d 254.

No. 02–6254. MEDEL *v.* GALETKA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 644.

No. 02–6267. JANOE *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–6274. PERRY *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 508.

No. 02–6287. ELLEN J. *v.* SONOMA COUNTY HUMAN SERVICES DEPARTMENT. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 96 Cal. App. 4th 805, 117 Cal. Rptr. 2d 813.

No. 02–6295. RODORIQUEZ SEPEDA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6304. WALKER *v.* GRANT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 854.

No. 02–6332. HANSEN *v.* SMITH. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 936.

No. 02–6340. TAYLOR *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied.

No. 02–6346. LEKAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–6353. COLE *v.* PENNSYLVANIA ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 782 A. 2d 84.

No. 02–6361. SMULLS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 71 S. W. 3d 138.

No. 02–6362. DIANNE C. *v.* SONOMA COUNTY HUMAN SERVICES DEPARTMENT. Ct. App. Cal., 1st App. Dist. Certiorari de-

nied. Reported below: 96 Cal. App. 4th 805, 117 Cal. Rptr. 2d 813.

No. 02–6385. WILLIAMS *v.* JOHNSON, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 283 F. 3d 272.

No. 02–6402. O'LEARY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII. C. A. 9th Cir. Certiorari denied.

No. 02–6413. TAYLOR *v.* POTTER, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 858.

No. 02–6415. APARICIO-CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6417. BEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–6432. BRADSHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 690.

No. 02–6441. FORD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 801 So. 2d 318.

No. 02–6457. SMITH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 36 Fed. Appx. 444.

No. 02–6461. AGUILAR-MORENO *v.* UNITED STATES; ALVAREZ-BLANCO *v.* UNITED STATES; DE LA CRUZ-HERNANDEZ *v.* UNITED STATES; RODARTE-RODRIGUEZ *v.* UNITED STATES; RAMOS-HIPOLITO, AKA RAMOS *v.* UNITED STATES; and HERRERA-TORRES, AKA LOPEZ AYALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321 (second, fifth, and sixth judgments) and 322 (first, third, and fourth judgments).

No. 02–6465. GARCIA-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–6483. HOLMES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 719, 565 S. E. 2d 154.

No. 02–6507. TAYLOR *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS. C. A. D. C. Cir. Certiorari denied. Reported below: 39 Fed. Appx. 615.

No. 02–6527. WHITE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 197.

No. 02–6528. WASHINGTON *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied.

No. 02–6531. CARROLL *v.* GOAD ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6542. SMITH ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 927.

No. 02–6543. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 801 A. 2d 958.

No. 02–6544. SALGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 1169.

No. 02–6546. BROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 285 F. 3d 1102.

No. 02–6555. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 103.

No. 02–6558. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 326.

No. 02–6559. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–6563. FAJARDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 928.

No. 02–6566. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–6569. OLVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 02–6571. FASSLER *v.* PENDLETON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 379.

No. 02–6579. WALLACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 85.

No. 02–6581. ALLEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 354.

No. 02–6588. ELLISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–6589. DAVAGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 35 Fed. Appx. 356.

No. 02–6599. LEOPARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 360.

No. 02–6600. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 597.

No. 02–6602. POSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–6605. LESTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 257.

No. 02–6606. MARTINEZ-VACA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 509.

No. 02–6609. O'DONALD *v.* PEREZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 702.

No. 02–6610. POLK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 296 F. 3d 344.

No. 02–6613. KOENIG *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 137 Md. App. 783.

No. 02–6614. SIMON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 60.

No. 02–6617. ADDISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 463.

No. 02–6620. RAYSOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6621. SANCHEZ-SANDOVAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 885.

No. 02–6623. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6625. JOSEPH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 985.

No. 02–6629. NAVARRETE-LANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 538.

No. 02–6630. CRUM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 885.

No. 02–6632. DUFFY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 218.

No. 02–6633. COOK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 30.

No. 02–6635. SHINGLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 141.

No. 02–6636. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 989.

No. 02–6637. HODULIK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 656.

No. 02–6638. HICHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 884.

No. 02–6641. FAST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6644. HARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 311.

No. 02–6646. FRIAS-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6649. BRANGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 422.

No. 02–6650. PEREZ, AKA SANCHEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 711.

No. 02–6662. FYE, AKA SCHARPENTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–6663. FRENCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 645.

No. 02–6667. MARTINEZ, AKA MEZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 624.

No. 02–6668. WATSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 957.

No. 02–6669. DEJESUS ZUNIGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 883.

No. 02–6670. AIKEN *v.* DODRILL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 143.

No. 02–6672. VILLANUEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6680. SMILEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 702.

No. 02–6681. DOBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 55.

No. 02–6682. INMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–6686. TRENNELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 290 F. 3d 881.

No. 02–6690. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6692. TANOUIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 568.

No. 02–6694. LUTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 676.

No. 02–6751. THROWER *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 02–6756. GOMEZ-GALVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 907.

No. 02–6773. MORGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 885.

No. 02–6783. MARQUEZ-CARREON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 107.

No. 02–295. GAGNON *v.* SPRINT CORP., DBA SPRINT, ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed as a

veteran granted. Certiorari denied. Reported below: 284 F. 3d 839.

No. 02–330. WALLS, WARDEN *v.* WRIGHT. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 288 F. 3d 937.

No. 02–5019. POWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. JUSTICE BREYER would grant certiorari.

No. 02–6006. AHMED *v.* COCA COLA BOTTLING CO., INC., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 01–9124. HAYES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 535 U. S. 1084; and

No. 01–9207. CARRIO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 535 U. S. 1101. Petitions for rehearing denied.

NOVEMBER 5, 2002

Certiorari Denied

No. 02–6250 (02A345). COLBURN *v.* COCKRELL, 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: 37 Fed. Appx. 90.

NOVEMBER 6, 2002

Miscellaneous Order

No. 02A376. COLBURN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending the timely filing and disposition of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this

stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall continue pending the sending down of the judgment of this Court.

November 8, 2002

Miscellaneous Order

No. 02A376. Colburn *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. Petitioner is directed to file a petition for writ of certiorari on or before 3 p.m., Monday, December 9, 2002. A brief in opposition is due on or before 3 p.m., Monday, December 30, 2002. A reply brief, if any, shall be filed within seven days of the filing of the brief in opposition. This Court's Rule 29.2 does not apply.

November 12, 2002

Certiorari Granted—Vacated and Remanded

No. 02–10. Galaza, Warden *v.* Powell. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Early* v. *Packer*, *ante*, p. 3. Reported below: 282 F. 3d 1089.

No. 02–25. Immigration and Naturalization Service *v.* Yi Quan Chen. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *INS* v. *Orlando Ventura*, *ante*, p. 12. Reported below: 266 F. 3d 1094.

No. 02–193. Intermatic Inc. *v.* Lamson & Sessions Co. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U. S. 722 (2002). Reported below: 273 F. 3d 1355.

Certiorari Dismissed

No. 02–6748. Swint *v.* United States. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 02M34. Barnett *v.* Johnson, Superintendent, Snake River Correctional Institution; and

No. 02M35. DUPRE *v.* WEST BATON ROUGE PARISH SCHOOL BOARD. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01–10279. KOSTH *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 02–258. JINKS *v.* RICHLAND COUNTY, SOUTH CAROLINA. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 972.] Motion of the United States for leave to intervene granted.

No. 02–367. AMERICAN CYANAMID CO. *v.* GEYE ET AL. Sup. Ct. Tex. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–6247. RIEMERS *v.* PETERS-RIEMERS. Sup. Ct. N. D. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 3, 2002, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 02–598. IN RE ALEXANDER;
No. 02–6850. IN RE BARNETT;
No. 02–6869. IN RE JERNIGAN;
No. 02–6899. IN RE MIKKO;
No. 02–6946. IN RE HARRISON;
No. 02–6947. IN RE FAIRFIELD;
No. 02–6953. IN RE HART; and
No. 02–6967. IN RE PERRY. Petitions for writs of habeas corpus denied.

No. 02–381. IN RE TRANSEURO AMERTRANS WORLDWIDE MOVING & RELOCATIONS LTD.;
No. 02–6248. IN RE DEDES;
No. 02–6616. IN RE MCGHGHY;
No. 02–6704. IN RE HETHERINGTON; and
No. 02–6806. IN RE TAMFU. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 02–361. UNITED STATES ET AL. *v.* AMERICAN LIBRARY ASSN., INC., ET AL. Appeal from D. C. E. D. Pa. Probable jurisdiction noted. Reported below: 201 F. Supp. 2d 401.

Certiorari Granted

No. 02–196. NATIONAL PARK HOSPITALITY ASSN. *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 282 F. 3d 818.

No. 02–322. DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari granted. Reported below: 287 F. 3d 628 and 297 F. 3d 672.

Certiorari Denied

No. 01–10925. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 287 F. 3d 325.

No. 02–139. SAMUEL *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 252 Wis. 2d 26, 643 N. W. 2d 423.

No. 02–183. PRATER ET AL. *v.* CITY OF BURNSIDE, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 289 F. 3d 417.

No. 02–191. YOHN *v.* UNIVERSITY OF MICHIGAN REGENTS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 225.

No. 02–214. GREENWAY ENTERPRISES, INC. *v.* CASIANO. Sup. Ct. Mont. Certiorari denied. Reported below: 309 Mont. 358, 47 P. 3d 432.

No. 02–252. VIZCAINO ET AL. *v.* WAITE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 290 F. 3d 1043.

No. 02–305. MOORE, ATTORNEY GENERAL OF MISSISSIPPI, ET AL. *v.* CHAMBER OF COMMERCE OF THE UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 187.

No. 02–332. COMBS, FDBA WATER'S EDGE APARTMENTS *v.* FAIR HOUSING OF MARIN. C. A. 9th Cir. Certiorari denied. Reported below: 285 F. 3d 899.

No. 02–343. LUTHER *v.* BURTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 467.

No. 02–369. SUTHERLAND *v.* CITY OF BIRMINGHAM, ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 834 So. 2d 755.

No. 02–373. ORANGE BANG, INC., ET AL. *v.* JUICY WHIP, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 292 F. 3d 728.

No. 02–376. MYRLAND ET AL. *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 644 N. W. 2d 847.

No. 02–382. MACHULAS *v.* OVERCAMP. Sup. Ct. Del. Certiorari denied. Reported below: 790 A. 2d 476.

No. 02–383. CAMPANA *v.* CITY OF GREENFIELD, MASSACHUSETTS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 339.

No. 02–387. BAUTISTA RIVERA *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–388. REINERT & DUREE, P. C., ET AL. *v.* SOSNE. C. A. 8th Cir. Certiorari denied. Reported below: 293 F. 3d 1069.

No. 02–389. QUINN *v.* SHIREY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 293 F. 3d 315.

No. 02–390. BAREFOOT ET AL. *v.* CITY OF WILMINGTON, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 306 F. 3d 113.

No. 02–391. WASHINGTON *v.* MCCAULEY. Ct. Sp. App. Md. Certiorari denied. Reported below: 141 Md. App. 747.

No. 02–406. FORD MOTOR CO. *v.* JARVIS. C. A. 2d Cir. Certiorari denied. Reported below: 283 F. 3d 33.

No. 02–461. MARTY ET AL. *v.* SUPREME COURT OF LOUISIANA; and ROYOT *v.* SUPREME COURT OF LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 819 So. 2d 278.

No. 02–474. SCHEID ET AL., AS SUCCESSORS TO SECURITIES INVESTOR PROTECTION CORP. *v.* GOLDBERG. C. A. 10th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 423.

No. 02–528. BRANTLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 986.

No. 02–536. BENTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 57 M. J. 24.

No. 02–537. ANDERSON ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 29 Fed. Appx. 619.

No. 02–543. BIEBER *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 287 F. 3d 1358.

No. 02–5733. LEHR *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 201 Ariz. 509, 38 P. 3d 1172.

No. 02–5807. TRAEGER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 289 F. 3d 461.

No. 02–6230. GARCIA AROMI *v.* POLICE DEPARTMENT OF PUERTO RICO. C. A. 1st Cir. Certiorari denied. Reported below: 36 Fed. Appx. 459.

No. 02–6237. MILTON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 377.

No. 02–6239. TROTTER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6240. WILSON *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6251. PRIDGEN *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 54 Mass. App. 1110, 765 N. E. 2d 827.

No. 02–6255. S. T. *v.* MASSACHUSETTS DEPARTMENT OF SOCIAL SERVICES. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 436 Mass. 690, 767 N. E. 2d 29.

No. 02–6264. JONES *v.* LAMARQUE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 877.

No. 02–6281. ARDIS *v.* PRYOR, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6284. WILLIBY *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–6285. BEETON, INDIVIDUALLY AND AS CO-EXECUTOR OF THE ESTATE OF BEETON *v.* BEETON. Sup. Ct. Va. Certiorari denied. Reported below: 263 Va. 329, 559 S. E. 2d 663.

No. 02–6288. MATHIS *v.* CHICAGO AUTOMOBILE TRADE ASSN. C. A. 7th Cir. Certiorari denied.

No. 02–6290. RAHEEM *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 87, 560 S. E. 2d 680.

No. 02–6293. BRANNAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 70, 561 S. E. 2d 414.

No. 02–6323. GASTON *v.* OHIO. Ct. App. Ohio, Belmont County. Certiorari denied.

No. 02–6372. REVILLA *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 283 F. 3d 1203.

No. 02–6387. REMBA *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6523. LETIZIA *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6534. NOLEN *v.* MINDEN POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–6577. RESTUCCI *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 55 Mass. App. 1102, 769 N. E. 2d 341.

No. 02–6631. COUSIN *v.* SAVAGE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 45.

No. 02–6639. GUANIPA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 946.

No. 02–6705. IRIZARRY-CENTENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 29 Fed. Appx. 9.

No. 02–6708. BETHEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 856.

No. 02–6710. BRADLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 636.

No. 02–6719. SAWABINI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 885.

No. 02–6721. WALLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 293 F. 3d 959.

No. 02–6723. MOORE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 633.

No. 02–6724. PARKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 978.

No. 02–6735. GIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 388.

No. 02–6742. MATUS-LEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 287 F. 3d 758.

No. 02–6745. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 256.

No. 02–6749. HOLMES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6754. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6755. COLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6757. HERNANDEZ-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 453.

No. 02–6759. GILLIARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 534.

No. 02–6760. HAGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 267 F. 3d 1202.

No. 02–6767. PENNINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 287 F. 3d 739.

No. 02–6769. VILLACRESES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 287.

No. 02–6770. WHYTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 676.

No. 02–6771. WOMACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–6772. McNeal *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 164.

No. 02–6774. Pritchett *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 901.

No. 02–6777. Castaneda-Ordaz, aka Ortiz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 829.

No. 02–6779. Nichols *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 285 F. 3d 445.

No. 02–6780. Yarbrough *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 95 Ohio St. 3d 227, 767 N. E. 2d 216.

No. 02–6781. Fields *v.* Mullin, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 277 F. 3d 1203.

No. 02–6787. Bazante *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 505.

No. 02–6789. Fasano *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 272 F. 3d 159.

No. 02–6790. Gutierrez-Razon *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 918.

No. 02–6791. Fanning *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 923.

No. 02–6800. Chase *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 296 F. 3d 247.

No. 02–6802. Yi *v.* United States District Court for the Southern District of New York. C. A. 2d Cir. Certiorari denied.

No. 02–6809. Jarnigan *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 02–6810. Shelby *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 599.

No. 02–6815. Pellot *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 473.

No. 02–6822. FOSTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 40.

No. 02–6823. EL-NOBANI, AKA NUBANI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 287 F. 3d 417.

No. 02–6828. OWENS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–6829. BARROW, AKA BURROW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 287 F. 3d 733.

No. 02–6837. LEE PENG FEI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6838. GARRETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6841. HODGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 310.

No. 02–6842. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6844. MONTOYA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 329.

No. 02–6860. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–6861. VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 354.

No. 02–6862. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 808.

No. 02–6872. AVERY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 295 F. 3d 1158.

No. 01–1867. MULDER ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Motion of Mountain States Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 307 F. 3d 760.

No. 02–345. HITE *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consider-

ation or decision of this petition. Reported below: 31 Fed. Appx. 535.

No. 02–362. WHEELING & LAKE ERIE RAILWAY CO. *v.* BONACORSI. Sup. Ct. Ohio. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 95 Ohio St. 3d 314, 767 N. E. 2d 707.

No. 02–375. CRAFT *v.* GEORGIA. Ct. App. Ga. Motion of Naturist Action Committee et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 252 Ga. App. 834, 558 S. E. 2d 18.

No. 02–435. OHIO *v.* TORR. Ct. App. Ohio, Franklin County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

Rehearing Denied

No. 01–9138. HARRELL *v.* UNITED STATES, 535 U. S. 1026;
No. 01–9692. FERGUSON *v.* WM. WRIGLEY JR. CO. ET AL., 536 U. S. 929;
No. 01–9827. DUNCAN *v.* CAIN, WARDEN, *ante*, p. 829; and
No. 02–5222. IN RE DOOSE, *ante*, p. 811. Petitions for rehearing denied.

NOVEMBER 14, 2002

Certiorari Denied

No. 02–7153 (02A369). KASI *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 300 F. 3d 487.

NOVEMBER 15, 2002

Dismissal Under Rule 46

No. 01–1766. ZAPATA INDUSTRIES, INC. *v.* W. R. GRACE & CO.-CONN. C. A. Fed. Cir. [Certiorari granted, 536 U. S. 990.] Writ of certiorari dismissed under this Court's Rule 46.1.

NOVEMBER 18, 2002

Certiorari Dismissed

No. 02–6303. TAYLOR *v.* PENNINGTON ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–6416. BOWEN *v.* HUNT, GOVERNOR OF NORTH CAROLINA, ET AL. Ct. App. N. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2332. IN RE DISBARMENT OF HARLEY. Disbarment entered. [For earlier order herein, see 536 U. S. 975.]

No. 02M37. MURRAY *v.* GOLDMAN;
No. 02M38. ARELLANO *v.* SIKORSKY AIRCRAFT; and
No. 02M39. DELOS SANTOS *v.* OFFICE OF PERSONNEL MANAGEMENT. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 02M36. DOUGLAS *v.* DUCOMB CENTER ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 128, Orig. ALASKA *v.* UNITED STATES. Motion of the Special Master for fees and reimbursement of expenses granted, and the Special Master is awarded a total of $86,070.21 for the period April 17 through October 16, 2002, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 535 U. S. 1052.]

No. 01–11029. GOBBI *v.* BANK OF NEW YORK ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 02–5218. STURDZA *v.* UNITED ARAB EMIRATES ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 01–1325. BROWN ET AL. *v.* LEGAL FOUNDATION OF WASHINGTON ET AL. C. A. 9th Cir. [Certiorari granted, 536 U. S.

903.] Motion of respondents Justices of the Supreme Court of Washington for divided argument granted.

No. 01–1444. CHAVEZ *v.* MARTINEZ. C. A. 9th Cir. [Certiorari granted, 535 U. S. 1111.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–197. MONSANTO CO. *v.* BAYER CROPSCIENCE, S. A. C. A. Fed. Cir.; and

No. 02–429. DETHMERS MANUFACTURING CO., INC. *v.* AUTOMATIC EQUIPMENT MANUFACTURING CO. C. A. Fed. Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 02–7048. IN RE WADE;

No. 02–7057. IN RE RICCO; and

No. 02–7127. IN RE RAGLAND. Petitions for writs of habeas corpus denied.

No. 02–6419. IN RE KELLEY. Petition for writ of mandamus denied.

No. 02–6349. IN RE SEATON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 02–6358. IN RE LEE. Petition for writ of mandamus and/or prohibition denied.

No. 02–6814. IN RE WARREN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 02–403. FEDERAL ELECTION COMMISSION *v.* BEAUMONT ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 278 F. 3d 261.

No. 02–311. WIGGINS *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 288 F. 3d 629.

No. 02–479. MEDICAL BOARD OF CALIFORNIA *v.* HASON. C. A. 9th Cir. Motion of the United States for leave to intervene granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 279 F. 3d 1167.

Certiorari Denied

No. 01–10303. MOZLEY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 214.

No. 01–10551. DEJESUS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 567 Pa. 415, 787 A. 2d 394.

No. 01–11015. EVANS *v.* CITY OF KINGSVILLE, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 838.

No. 02–202. D. L. CROMWELL INVESTMENTS, INC., ET AL. *v.* NASD REGULATION, INC. C. A. 2d Cir. Certiorari denied. Reported below: 279 F. 3d 155.

No. 02–209. FERNANDEZ ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 500.

No. 02–217. WILSON ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 290 F. 3d 347.

No. 02–218. GRINE ET AL. *v.* COOMBS ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–223. ANGARONE ET AL. *v.* IENCO. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 994.

No. 02–346. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL–CIO, ET AL. *v.* LOWE EXCAVATING CO. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 327 Ill. App. 3d 711, 765 N. E. 2d 21.

No. 02–397. DELOITTE & TOUCHE LLP ET AL. *v.* DIRIENZO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 294 F. 3d 21.

No. 02–399. KRAFT *v.* CAL-WESTERN RECONVEYANCE CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 595.

No. 02–404. BAZARGANI *v.* HAVERFORD STATE HOSPITAL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 647.

No. 02–407. HUNTSINGER *v.* BOARD OF DIRECTORS OF THE E–470 PUBLIC HIGHWAY AUTHORITY. C. A. 10th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 749.

No. 02–410. GREEN *v.* GIANOS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 648.

No. 02–411. PLAYGIRL, INC. *v.* SOLANO. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 1078.

No. 02–412. TEDFORD *v.* BENCHMARK INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 318.

No. 02–417. MCAULEY *v.* KENNAY. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 02–418. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL. *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 286 F. 3d 600.

No. 02–421. SCRUGGS ET AL. *v.* DAYNARD. C. A. 1st Cir. Certiorari denied. Reported below: 290 F. 3d 42.

No. 02–422. STAPLES *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–423. SATHYAVAGLSWARAN ET AL. *v.* NEWMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 287 F. 3d 786.

No. 02–427. COSTERUS *v.* NEAL ET AL. C. A. 1st Cir. Certiorari denied.

No. 02–431. LIEBEL ET AL. *v.* VISITING NURSE ASSN. ET AL. Sup. Ct. Conn. Certiorari denied.

No. 02–433. MARSH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 874.

No. 02–436. PICKENS MECHANICAL CONTRACTORS, INC., ET AL. *v.* FIRST ENTERPRISE BANK. Ct. Civ. App. Okla. Certiorari denied.

No. 02–438. JONES *v.* ROBINSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 761.

No. 02–448. HILL ET AL., AS NEXT FRIENDS OF COURS, A MINOR *v.* CITY OF FREEPORT, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 712.

No. 02–449. HOLIDAY QUALITY FOODS, INC. *v.* DORAN. C. A. 9th Cir. Certiorari denied. Reported below: 293 F. 3d 1133.

No. 02–456. ROJAS *v.* IONICS, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 02–457. ROLLESTON *v.* ESTATE OF SIMS ET AL. Ct. App. Ga. Certiorari denied. Reported below: 253 Ga. App. 182, 558 S. E. 2d 411.

No. 02–459. FRANCISCO *v.* M/T STOLT ACHIEVEMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 270.

No. 02–462. PROVIDENT LIFE & ACCIDENT INSURANCE CO. *v.* COOPER. C. A. 9th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 370.

No. 02–465. MIRANDA VARGAS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–480. ADAMS *v.* INDIANA DEPARTMENT OF REVENUE. Sup. Ct. Ind. Certiorari denied. Reported below: 762 N. E. 2d 728.

No. 02–491. MICCOSUKEE TRIBE OF INDIANS OF FLORIDA *v.* TAMIAMI PARTNERS, LTD. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 855.

No. 02–495. SOKOLOV *v.* TREX MEDICAL CORP., LORAD DIVISION, ET AL. App. Ct. Conn. Certiorari denied. Reported below: 69 Conn. App. 905, 798 A. 2d 500.

No. 02–502. M–3 & ASSOCIATES, INC. *v.* CARGO SYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 33 Fed. Appx. 513.

No. 02–505. CURREY ET AL. *v.* CITY OF DALLAS, TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 02–532. McClure *v.* Galvin, Secretary of the Commonwealth of Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 436 Mass. 614, 766 N. E. 2d 847.

No. 02–533. Williams *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 536, 50 P. 3d 1116.

No. 02–539. Martin et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 944.

No. 02–549. Daily *v.* Judges, Pennsylvania Court of Common Pleas, First Judicial District, Family Court Division, et al. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 521.

No. 02–582. Cuni *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 271 F. 3d 968.

No. 02–586. Carbone *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–590. Saccoccia *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 42 Fed. Appx. 476.

No. 02–600. Borges *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 388.

No. 02–5036. Tinajero *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 962.

No. 02–5230. Young *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 287 F. 3d 1352.

No. 02–5278. Bueno *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 761 A. 2d 856.

No. 02–5366. Mantecon-Zayas *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 928.

No. 02–5781. Jackson *v.* Alabama. Sup. Ct. Ala. Certiorari denied. Reported below: 836 So. 2d 979.

No. 02–5796. Scott *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 284 F. 3d 758.

No. 02–5922. Lomax *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 701.

No. 02–5938. WHITBY *v.* CENTRAL GEORGIA HEALTH SYSTEM ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 980.

No. 02–6229. REDDEN *v.* GALLEY, WARDEN, ET AL.; and
No. 02–6297. REDDEN *v.* MADES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 135.

No. 02–6258. CHAPPELL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–6273. URESTI ROJAS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–6299. TORRES *v.* BUTLER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 836.

No. 02–6300. WEBSTER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 817 So. 2d 515.

No. 02–6302. YOWEL, AKA ROBINSON *v.* WARNER, GOVERNOR OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 63.

No. 02–6305. JOHNSON *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6309. ASHLEY *v.* REASONER, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 02–6311. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6313. SHAW *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 225.

No. 02–6314. SHELTON *v.* RICHMOND PUBLIC SCHOOLS. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 251.

No. 02–6315. RAMIREZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 823 So. 2d 125.

No. 02–6316. SHOEMAKER *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–6317. NELSON *v.* CURTIS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–6329. HUNT *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 83.

No. 02–6331. HARRIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–6347. NEWTON *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–6348. ROYSTER *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6350. LAMONS *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 492.

No. 02–6352. LADMIRAULT *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6365. TRETHEWEY *v.* FARMON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 591.

No. 02–6366. DOBELLE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6373. JAQUEZ *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6392. MCCLAIN *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–6395. MARTIN *v.* SCOTT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 878.

No. 02–6396. JOST *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6397. BARNHILL *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 02–6398. BASNIGHT *v.* KEANE, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6403. PROSSER *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–6405. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–6411. BURLESON *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 292 F. 3d 1253.

No. 02–6412. WARD *v.* HAWAII DEPARTMENT OF HUMAN SERVICES. C. A. 9th Cir. Certiorari denied.

No. 02–6418. MANS *v.* YOUNG, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 766.

No. 02–6420. NATURALITE *v.* PEPPLER. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 556.

No. 02–6421. SWAIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–6423. STRONG *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6433. RIMMER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 825 So. 2d 304.

No. 02–6454. JAMES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–6458. CHAPMAN *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 100.

No. 02–6467. KELLY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 297.

No. 02–6468. VLIET *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6469. WILSON *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–6472. COLLINS ET AL. *v.* FCC/NATIONAL BANK. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–6476. SANCHEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6499. NORRIS *v.* DEPARTMENT OF LABOR. C. A. 9th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 673.

No. 02–6533. NEWMAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–6561. GARZA *v.* SOUTH TEXAS COMMUNITY COLLEGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 836.

No. 02–6576. SCOTT *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6580. TYLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 186.

No. 02–6593. WARD *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 690.

No. 02–6598. YOUNG *v.* CITY OF ST. CHARLES, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 245.

No. 02–6622. WILLIAMS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 149 N. C. App. 795, 561 S. E. 2d 925.

No. 02–6626. OWENS *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 290 F. 3d 960.

No. 02–6660. BESARABA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 02–6666. FINCHAM *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 612.

No. 02–6695. BREEDLOVE *v.* WOOD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 600.

No. 02–6778. MCCLOUD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 803 So. 2d 821.

No. 02–6788. GARZONI *v.* KMART CORP. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 179.

No. 02–6792. HANNA *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 95 Ohio St. 3d 285, 767 N. E. 2d 678.

No. 02–6794. RAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 291 F. 3d 1039.

No. 02–6795. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 321.

No. 02–6799. NYLAND *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6801. POPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–6805. WATKINS-EL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 716.

No. 02–6807. WILCOX *v.* PETERSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 949.

No. 02–6808. TORRES-HERRERA, AKA HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 102.

No. 02–6831. BOONE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 825 So. 2d 376.

No. 02–6849. DUNNOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 295 F. 3d 431.

No. 02–6851. MCLECZYNSKY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 296 F. 3d 634.

No. 02–6853. MARTINEZ-LAREDO, AKA MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 326.

No. 02–6856. FAREED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 296 F. 3d 243.

No. 02–6857. COX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 294 F. 3d 959.

No. 02–6868. LORA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 106.

No. 02–6870. BENDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 F. 3d 1279.

No. 02–6875. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 471.

No. 02–6878. GREGORY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 785.

No. 02–6880. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 910.

No. 02–6881. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 864.

No. 02–6883. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 784.

No. 02–6884. CARRANZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 F. 3d 634.

No. 02–6885. CASIMIRO CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 504.

No. 02–6886. CHEATWOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 386.

No. 02–6891. SCRUGGS *v.* SNYDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 829.

No. 02–6892. OKEREKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 307 F. 3d 117.

No. 02–6893. MENDOZA-PAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 F. 3d 1104.

No. 02–6895. THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 362.

No. 02–6898. LONGORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 367.

No. 02–6901. DUARTE-ACERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1277.

No. 02–6906. VARGAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 39 Fed. Appx. 612.

No. 02–6909. MUSTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 921.

No. 02–6911. MORRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 223.

No. 02–6912. NAVARRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 37.

No. 02–6914. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 326.

No. 02–6916. PHILBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 104.

No. 02–6918. BERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 466.

No. 02–6920. WOODS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 141.

No. 02–6926. COUCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 291 F. 3d 251.

No. 02–6929. AUBREY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 326.

No. 02–6930. BEVERLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 428.

No. 02–6934. BULLARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 753.

No. 02–6935. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 630.

No. 02–6936. BURTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 288 F. 3d 91.

No. 02–6943. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 573.

No. 02–6948. HERD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6958. HICKMAN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 93 Ohio St. 3d 1497, 758 N. E. 2d 1148.

No. 02–6968. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6987. HEDGEWOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7002. HUNTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 151.

No. 02–396. DEY, L. P., ET AL. *v.* ABBOTT LABORATORIES ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 287 F. 3d 1097.

No. 02–6370. ROTSCHAFER *v.* KAISER FOUNDATION HEALTH PLAN OF GEORGIA, INC. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 35 Fed. Appx. 857.

No. 02–6455. LOVING *v.* TRENTS FLYING SERVICE. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 45 Fed. Appx. 325.

No. 02–419. GERBER *v.* HICKMAN, WARDEN. C. A. 9th Cir. Motion of Pechanga Band of Luiseno Mission Indians for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 291 F. 3d 617.

Rehearing Denied

No. 01–10609. CRAWFORD *v.* HARRISON ET AL., *ante,* p. 852;

No. 01–10882. BRAZIEL *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, *ante,* p. 869;

No. 02–23. FOXX *v.* DEPARTMENT OF THE NAVY ET AL., *ante,* p. 879;

No. 02–5031. DIAZ *v.* MERCURY INSURANCE CO., *ante,* p. 890; and

No. 02–5075. SEDGWICK *v.* UNITED STATES, *ante,* p. 893. Petitions for rehearing denied.

NOVEMBER 19, 2002

Miscellaneous Orders

No. 02A408. OGAN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE SCALIA took no part in the consideration or decision of this application.

No. 02–7473 (02A405). IN RE OGAN. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 02–7261 (02A372). OGAN *v.* COCKRELL, 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: 297 F. 3d 349.

No. 02–7496 (02A407). JONES *v.* ROPER, 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, denied. Certiorari denied. Reported below: 311 F. 3d 923.

NOVEMBER 20, 2002

Miscellaneous Order

No. 02–7523 (02A411). IN RE CHAPPELL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 02–7524 (02A412). CHAPPELL *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.

No. 02–7527 (02A413). CHAPPELL *v.* COCKRELL, 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: 54 Fed. Appx. 591.

NOVEMBER 27, 2002

Miscellaneous Order

No. 02A436. MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* KING. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit on November 26, 2002, presented to JUSTICE KENNEDY, and by him referred to the Court, granted. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would deny the application to vacate the stay of execution.

DECEMBER 2, 2002

Certiorari Granted—Vacated and Remanded

No. 02–121. KLAUSER, WARDEN *v.* GRAY. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Early* v. *Packer*, *ante*, p. 3. Reported below: 282 F. 3d 633.

No. 02–5161. TORRES-SORIA *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case re-

manded for further consideration in light of *Alabama* v. *Shelton*, 535 U. S. 654 (2002). Reported below: 35 Fed. Appx. 387.

Certiorari Dismissed

No. 02–6551. EURY *v.* JOHNSON ET AL. C. A. 4th Cir.; and

No. 02–6552. EURY *v.* MOHEAD ET AL. C. A. 4th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 02–6679. MARBLY *v.* MAYOR, CITY OF SOUTHFIELD, MICHIGAN, ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 38 Fed. Appx. 305.

No. 02–6905. TROBAUGH *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 35 Fed. Appx. 812.

Miscellaneous Orders

No. 02M40. GLAIR *v.* BUTTS ET AL.; and

No. 02M41. DAVIS, SUPERINTENDENT, INDIANA STATE PRISON *v.* ROCHE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01–1289. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. *v.* CAMPBELL ET UX. Sup. Ct. Utah. [Certiorari granted, 535 U. S. 1111.] Motion of respondents to substitute special administrator and personal representative, and to recaption granted.

No. 02–355. SOUTHERN BUILDING CODE CONGRESS INTERNATIONAL, INC. *v.* VEECK, DBA REGIONAL WEB. C. A. 5th Cir.; and

No. 02–458. RAYMOND B. YATES, M. D., P. C. PROFIT SHARING PLAN ET AL. *v.* HENDON, TRUSTEE. C. A. 6th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 02–5552. MCCARRIN *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 23, 2002, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 02–6980. STOKES, AKA MUHAMMED *v.* UNITED STATES PAROLE COMMISSION. C. A. D. C. Cir. Motion of petitioner to defer consideration of petition for writ of certiorari granted.

No. 02–7200. IN RE HUTTON;

No. 02–7205. IN RE GAY; and

No. 02–7237. IN RE DEWITT. Petitions for writs of habeas corpus denied.

No. 02–6709. IN RE EASTERWOOD. Petition for writ of mandamus denied.

No. 02–6611. IN RE NEWSOME. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 01–1757. STOGNER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari granted. Reported below: 93 Cal. App. 4th 1229, 114 Cal. Rptr. 2d 37.

No. 02–241. GRUTTER *v.* BOLLINGER ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 288 F. 3d 732.

No. 02–281. INYO COUNTY, CALIFORNIA, ET AL. *v.* PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 291 F. 3d 549.

No. 02–94. OVERTON, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. *v.* BAZZETTA ET AL. C. A. 6th Cir. Certiorari granted limited to the following questions: "1. Whether prisoners have a right to noncontact visitation protected by the

First and Fourteenth Amendments. 2. Whether the restrictions on noncontact prison visitation imposed by the Michigan Department of Corrections are reasonably related to legitimate penological interests. 3. Whether the restrictions on noncontact prison visitation imposed by the Michigan Department of Corrections constitute cruel and unusual punishment in violation of the Eighth Amendment." Reported below: 286 F. 3d 311.

No. 02–102. LAWRENCE ET AL. *v.* TEXAS. Ct. App. Tex., 14th Dist. Motion of Pro Family Law Center for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 41 S. W. 3d 349.

No. 02–516. GRATZ ET AL. *v.* BOLLINGER ET AL. C. A. 6th Cir. Certiorari before judgment granted limited to Question 1 presented by the petition.

Certiorari Denied

No. 01–1831. DOREL JUVENILE GROUP, INC. *v.* KOHUS. C. A. Fed. Cir. Certiorari denied. Reported below: 282 F. 3d 1355.

No. 01–1882. CITY OF LONG BEACH, CALIFORNIA *v.* FAIRLEY. C. A. 9th Cir. Certiorari denied. Reported below: 281 F. 3d 913.

No. 01–9994. LYON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–11031. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–126. WHITMORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 307.

No. 02–145. COOPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 501.

No. 02–167. LYN-LEA TRAVEL CORP., DBA FIRST CLASS INTERNATIONAL TRAVEL MANAGEMENT *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 283 F. 3d 282.

No. 02–185. RHEAMS ET AL. *v.* MARLER ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–228. ENRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 66.

No. 02–240. PEDRONI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 45 Fed. Appx. 103.

No. 02–266. PROJECT CONTROL SERVICES, INC. *v.* WESTINGHOUSE SAVANNAH RIVER CO. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 359.

No. 02–272. STRAWSER ET AL. *v.* ATKINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 290 F. 3d 720.

No. 02–277. HAVEMAN, DIRECTOR, MICHIGAN DEPARTMENT OF COMMUNITY HEALTH *v.* WESTSIDE MOTHERS, A MICHIGAN WELFARE RIGHTS ORGANIZATION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 289 F. 3d 852.

No. 02–283. ASSOCIATION OF CIVILIAN TECHNICIANS, INC. *v.* FEDERAL LABOR RELATIONS AUTHORITY. C. A. D. C. Cir. Certiorari denied. Reported below: 283 F. 3d 339.

No. 02–287. HUNT *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 291 F. 3d 284.

No. 02–296. NUNEZ *v.* CLARENDON AMERICAN INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 271.

No. 02–316. WILD ET UX. *v.* SUBSCRIPTIONS PLUS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 292 F. 3d 526.

No. 02–323. NDCHEALTH CORP. AND SUBSIDIARIES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 291 F. 3d 1381.

No. 02–358. PATAKI, GOVERNOR OF NEW YORK, ET AL. *v.* CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.; and No. 02–475. BRODSKY, NEW YORK STATE ASSEMBLY MEMBER *v.* CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 292 F. 3d 338.

No. 02–430. LLEH, INC., DBA BABE'S, ET AL. *v.* WICHITA COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 289 F. 3d 358.

No. 02–443. FREEH ET AL. *v.* TRULOCK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 275 F. 3d 391.

No. 02–446. FOREST OIL CORP. *v.* GULF CREWS INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 281 F. 3d 487.

No. 02–447. HEIDBREDER *v.* CARTON ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 645 N. W. 2d 355.

No. 02–450. GFI, INC. *v.* FRANKLIN CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 265 F. 3d 1268.

No. 02–451. HERNANDEZ-GOMEZ *v.* VOLKSWAGEN OF AMERICA, INC., ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 201 Ariz. 141, 32 P. 3d 424.

No. 02–452. GOLD, TRUSTEE *v.* SQUADRON, ELLENOFF, PLESENT & LEHRER ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 288 App. Div. 2d 57, 732 N. Y. S. 2d 565.

No. 02–454. HOLWAY ET AL. *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 644 N. W. 2d 624.

No. 02–464. MONTANA DEPARTMENT OF REVENUE *v.* FLAT CENTER FARMS, INC. Sup. Ct. Mont. Certiorari denied. Reported below: 310 Mont. 206, 49 P. 3d 578.

No. 02–468. CITIZEN POWER, INC., ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 38 Fed. Appx. 18.

No. 02–471. RIDLEY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 253 Ga. App. XXVII.

No. 02–477. FULTON COUNTY, GEORGIA *v.* WEBSTER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 283 F. 3d 1254.

No. 02–478. NPC SERVICES, INC., ET AL. *v.* MSOF CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 295 F. 3d 485.

No. 02–481. BRADLEY *v.* MONARCH CONSTRUCTION, INC. C. A. 8th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 420.

No. 02–485. CARDIELLO ET UX. *v.* THE MONEY STORE, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 780.

No. 02–486. RODRIGUEZ *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 283, 565 S. E. 2d 458.

No. 02–487. GENTILUOMO *v.* BRUNSWICK BOWLING & BILLIARDS CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 36 Fed. Appx. 433.

No. 02–488. KALAN *v.* CITY OF ST. FRANCIS, WISCONSIN. C. A. 7th Cir. Certiorari denied.

No. 02–489. JARROW FORMULAS, INC. *v.* NUTRITION NOW, INC. C. A. 9th Cir. Certiorari denied. Reported below: 304 F. 3d 829.

No. 02–492. NOLEN *v.* NUCENTRIX BROADBAND NETWORKS, INC., AKA HEARTLAND WIRELESS COMMUNICATIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 926.

No. 02–496. YETIV ET AL. *v.* CITY OF HOUSTON, TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 02–497. LEEMING *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–499. DREW *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 76 S. W. 3d 436.

No. 02–501. LAMB-BOWMAN *v.* DELAWARE STATE UNIVERSITY. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 748.

No. 02–507. MARTIN, SPECIAL ADMINISTRATOR OF THE ESTATE OF MARTIN, DECEASED, ET AL. *v.* SHAWANO-GRESHAM SCHOOL DISTRICT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 295 F. 3d 701.

No. 02–509. SERVAIS ET AL. *v.* KRAFT FOODS, INC., ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 252 Wis. 2d 145, 643 N. W. 2d 92.

No. 02–510. FERNANDES *v.* VIACOM, INC., ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 802 A. 2d 285.

No. 02–511. YOONESSI *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 289 App. Div. 2d 998, 735 N. Y. S. 2d 900.

No. 02–512. UNITED HOSPITAL CENTER ET AL. *v.* GUIDA. Sup. Ct. App. W. Va. Certiorari denied.

No. 02–515. DOUGHBOY RECREATIONAL DIVISION OF HOFFINGER, INC., ET AL. *v.* COYLE. Ct. Civ. App. Okla. Certiorari denied.

No. 02–523. HENDERSON ET AL. *v.* STALDER, SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 287 F. 3d 374.

No. 02–525. SHEALY *v.* SHEALY. C. A. 10th Cir. Certiorari denied. Reported below: 295 F. 3d 1117.

No. 02–547. ELLEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANCO, DECEASED *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 270.

No. 02–573. WRIGHT *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 953.

No. 02–574. TDC MANAGEMENT CORP., INC., ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 288 F. 3d 421.

No. 02–581. PILENZO *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 147.

No. 02–587. BRANNAM ET UX. *v.* HUNTINGTON MORTGAGE CO. C. A. 6th Cir. Certiorari denied. Reported below: 287 F. 3d 601.

No. 02–606. GE MEDICAL SYSTEMS INFORMATION TECHNOLOGIES, INC. *v.* BIOMEDICAL SYSTEMS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 287 F. 3d 707.

No. 02–610. THOMAS *v.* DOYLE, ATTORNEY GENERAL OF WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 373.

No. 02–611. DERMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 298 F. 3d 34.

No. 02–612. MCGUIRE *v.* ENSCO INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 322.

No. 02–619. GEE, DIRECTOR, PATUXENT INSTITUTION, ET AL. *v.* RUBIN. C. A. 4th Cir. Certiorari denied. Reported below: 292 F. 3d 396.

No. 02–623. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 834.

No. 02–627. LOPEZ ROMERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 882.

No. 02–631. HOLLIS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 57 M. J. 74.

No. 02–653. LEMONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 302 F. 3d 769.

No. 02–659. DILLON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–663. MORGAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 57 M. J. 119.

No. 02–666. PTASYNSKI ET AL. *v.* SHELL WESTERN E&P INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 126.

No. 02–678. O'HARA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 563.

No. 02–5015. BRADSHAW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 281 F. 3d 278.

No. 02–5060. BARBOSA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 271 F. 3d 438.

No. 02–5228. NEWSOME *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 301 F. 3d 227.

No. 02–5363. GATTIS *v.* SNYDER, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 278 F. 3d 222.

No. 02–5665. WILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–5728. SMALLEY *v.* THOMAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 02–5766. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 1260.

No. 02–5814. HOUGH *v.* ANDERSON. C. A. 7th Cir. Certiorari denied. Reported below: 272 F. 3d 878.

No. 02–5960. SYME *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 276 F. 3d 131.

No. 02–5976. MCGOWAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 274 F. 3d 1251.

No. 02–6027. PITSONBARGER *v.* SCHOMIG, WARDEN. Sup. Ct. Ill. Certiorari denied. Reported below: 205 Ill. 2d 444, 793 N. E. 2d 609.

No. 02–6058. LANCE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 11, 560 S. E. 2d 663.

No. 02–6064. CASTRO PEREZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–6097. JOHNSON *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 288 F. 3d 1187.

No. 02–6111. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 495.

No. 02–6459. SILVA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 02–6479. HITTER *v.* WELDON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 76.

No. 02–6484. HELDRETH *v.* ALLSTATE INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 159.

No. 02–6489. ANDERSON *v.* KENNEY, WARDEN. Ct. App. Neb. Certiorari denied.

No. 02–6496. SPEAR *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6498. ORTIZ-SALGADO *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 246.

No. 02–6504. MORA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 814 So. 2d 322.

No. 02–6514. SHAIVITZ *v.* SHAIVITZ. Ct. Sp. App. Md. Certiorari denied.

No. 02–6521. MAXWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 73 S. W. 3d 278.

No. 02–6529. BURNS *v.* CITY OF APPLE VALLEY, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 670.

No. 02–6532. CHARRON *v.* GLASS ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6535. DAVIS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 02–6537. CLARK *v.* ALEMEDA, DIRECTOR, CENTINELA STATE PRISON. C. A. 9th Cir. Certiorari denied.

No. 02–6539. PLOUSHA *v.* H & H SHIPPING CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6547. DENNIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 817 So. 2d 741.

No. 02–6553. DENNY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 199.

No. 02–6554. MCCANN *v.* CITY OF PERKIN, ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 02–6556. ARAGON *v.* TAFOYA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 255.

No. 02–6560. KARLS *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS, ET AL. Ct. App. Wis. Certiorari denied.

No. 02–6562. HALL *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 879.

No. 02–6564. HOWARD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 348 Ark. 471, 79 S. W. 3d 273.

No. 02–6567. HARVELL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 129, 562 S. E. 2d 180.

No. 02–6568. BOWDEN *v.* BAHL. C. A. 8th Cir. Certiorari denied.

No. 02–6572. CARMONA *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 629.

No. 02–6573. SALES *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 02–6574. SHAMBATUYEV *v.* YEARWOOD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6575. RODRIGUEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6578. SCOTT *v.* CRIST, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6582. WILLIAMSON *v.* FLOUR BLUFF INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–6583. THOMAS *v.* HOOKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–6585. VANDERBERG *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6586. VAN CLEAVE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 286 App. Div. 2d 941, 730 N. Y. S. 2d 758.

No. 02–6590. DUME *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 02–6592. MOORE *v.* VANDEL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106.

No. 02–6594. SCARBROUGH *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 300 F. 3d 302.

No. 02–6595. Ruiz Rivera *v.* Trevi Caribe, Inc. Sup. Ct. P. R. Certiorari denied.

No. 02–6596. Dantzler *v.* Vaughn, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied.

No. 02–6597. Clarke *v.* Cockrell, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–6601. Leonard *v.* Cornyn, Attorney General of Texas, et al. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 02–6604. Gordon *v.* Sheth et al. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 59.

No. 02–6608. Dela Cruz *v.* Kauai County, Hawaii, et al. C. A. 9th Cir. Certiorari denied. Reported below: 279 F. 3d 1064.

No. 02–6612. Davis *v.* Moore, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 500.

No. 02–6615. Bryant *v.* City of Bessemer, Alabama, et al. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 328.

No. 02–6618. Anderson *v.* General Motors Corp. Sup. Ct. Del. Certiorari denied. Reported below: 796 A. 2d 654.

No. 02–6619. O'Connor *v.* Northshore International Insurance Services, Inc., et al. C. A. 1st Cir. Certiorari denied.

No. 02–6627. Pointer *v.* St. Louis County Special School District. C. A. 8th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 479.

No. 02–6634. Stringer *v.* American Bankers Insurance Company of Florida et al. Ct. App. Miss. Certiorari denied. Reported below: 822 So. 2d 1011.

No. 02–6640. Herbert *v.* Moore, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 857.

No. 02–6643. FLOREZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 293.

No. 02–6645. GILBERT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 02–6647. GABBA *v.* SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO COUNTY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–6648. PETERSEN *v.* EVERETT ET AL. Ct. App. Mich. Certiorari denied.

No. 02–6651. BALSAM *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 108 Wash. App. 1036.

No. 02–6653. JOHNSON *v.* ROWLEY, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 420.

No. 02–6654. GONZALEZ *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Sup. Ct. Cal. Certiorari denied.

No. 02–6655. FOSTER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 766.

No. 02–6656. HOPKINS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6657. GAITER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 295.

No. 02–6659. GAY *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–6661. GASTON *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 892.

No. 02–6664. GOODMAN *v.* LEWIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–6665. HOBSON *v.* MCDANIEL, WARDEN. Sup. Ct. Nev. Certiorari denied.

No. 02–6673. SCHRICKEL *v.* LARSEN, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 02–6674. VASQUEZ *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 797 A. 2d 1027.

No. 02–6675. TERRY *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 02–6676. ZELLIS *v.* SALYER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 767.

No. 02–6677. CARTWRIGHT ET AL. *v.* RUBENSTEIN, COMMISSIONER, WEST VIRGINIA DIVISION OF CORRECTIONS. Sup. Ct. App. W. Va. Certiorari denied.

No. 02–6684. MARTIN *v.* WHITE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6685. PRATHER *v.* GEORGIA BOARD OF PARDONS AND PAROLES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 978.

No. 02–6687. ABDUL MALIK *v.* HILL. C. A. 11th Cir. Certiorari denied.

No. 02–6688. PATTERSON *v.* AMERICAN KENNEL CLUB, AKA AMERICAN KENNEL CLUB, INC. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 172.

No. 02–6691. BUTLER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 801 So. 2d 992.

No. 02–6696. ARREOLA *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 130.

No. 02–6697. CLARK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 293.

No. 02–6699. MASADA *v.* RICHSTAD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 104.

No. 02–6700. LEWIS *v.* MARSHALL COUNTY CORRECTIONAL FACILITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106.

No. 02–6702. GUESS *v.* OHIO. C. A. 6th Cir. Certiorari denied.

No. 02–6703. KEEBY *v.* COHN, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 290.

No. 02–6706. HEATHMAN *v.* KENNEY, WARDEN. Sup. Ct. Neb. Certiorari denied.

No. 02–6707. FIERROS *v.* LARSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6711. DIXON *v.* FRANCIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 140.

No. 02–6712. CANSECO *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 02–6713. COLONEL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 293.

No. 02–6715. BURNETT *v.* SABOURIN ET AL. Ct. App. Mich. Certiorari denied.

No. 02–6716. FRANCIS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 69 Conn. App. 378, 793 A. 2d 1224.

No. 02–6717. ZIEGLER *v.* OVERTON, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 697.

No. 02–6720. RICKS *v.* NICKELS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 295 F. 3d 1124.

No. 02–6722. TATE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6726. ARIAS *v.* RAMIREZ-PALMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6727. RASHED *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 785 A. 2d 1033.

No. 02–6733. HARRELL *v.* FLEMING, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 285 F. 3d 1292.

No. 02–6737. ISOM *v.* MCANDREWS ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6739. BROWN *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–6741. LAMAR *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 95 Ohio St. 3d 181, 767 N. E. 2d 166.

No. 02–6744. OLIVER *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 613.

No. 02–6758. HODGES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–6768. ENGLAND *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 02–6811. PEREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–6812. LEE *v.* BACA, SHERIFF. C. A. 9th Cir. Certiorari denied.

No. 02–6813. WILLIAMS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–6820. DAVIS *v.* PEE DEE COMMUNITY ACTION AGENCY, INC. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 776.

No. 02–6827. LOVE *v.* FULLER. Ct. Sp. App. Md. Certiorari denied. Reported below: 142 Md. App. 718.

No. 02–6830. HAZLEWOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 347.

No. 02–6833. FOWLER *v.* HUTCHINGS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 182.

No. 02–6836. GRANT *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6845. MCGEE *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 255 Ga. App. 708, 566 S. E. 2d 431.

No. 02–6847. LOVERN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 695.

No. 02–6848. EVANS *v.* WHITE, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 657.

No. 02–6855. GREER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 02–6871. BUCKLEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 349 Ark. 53, 76 S. W. 3d 825.

No. 02–6882. STEWART *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–6897. MARTINEZ-ZAMBRANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 120.

No. 02–6904. MCGREW *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 274 Kan. ——, 51 P. 3d 468.

No. 02–6907. AKINS *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6908. PAPEN *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 274 Kan. 149, 50 P. 3d 37.

No. 02–6921. ROBBINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 326.

No. 02–6922. SIMMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 285 F. 3d 1098.

No. 02–6928. TAYLOR *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 02–6941. BERROCAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 643.

No. 02–6942. DAVIDSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–6949. WILKERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 785.

No. 02–6954. FUSELIER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–6956. GUTIERREZ *v.* DOVE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 931.

No. 02–6959. HARRISON *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 02–6962. BUTLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6970. MARTINEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–6972. SADLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 102.

No. 02–6975. SALGEDO ROMAN *v.* PETERSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 474.

No. 02–6977. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 607.

No. 02–6979. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 697.

No. 02–6981. TAPIA BRAVO *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–6982. LIZALDE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 657.

No. 02–6986. ANDERSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–6992. SIFFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 834.

No. 02–6994. SECORE *v.* CONWAY, ACTING SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6995. SPENCER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–6996. SINGLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 929.

No. 02–6998. STATON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 644.

No. 02–7004. BILZERIAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7008. LESLIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7011. ASTERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1066.

No. 02–7012. MCKINNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 620.

No. 02–7013. MENDEZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 299 F. 3d 420.

No. 02–7014. MONTOYA-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 303.

No. 02–7016. VILLALONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 226.

No. 02–7018. VERNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 86.

No. 02–7019. DEVER *v.* MACK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 980.

No. 02–7020. GREER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 225.

No. 02–7021. GUTIERREZ-ELENES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 697.

No. 02–7023. FAUCHER, aka FANCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7024. GENERAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 859.

No. 02–7025. HARDEN *v.* UNITED STATES; and
No. 02–7122. HARDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 298 F. 3d 523.

No. 02–7027. KITHCART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 34 Fed. Appx. 872.

No. 02–7030. RUTHERFORD ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 534.

No. 02–7033. VAUGHN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 319.

No. 02–7034. ROSALES-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 F. 3d 1106.

No. 02–7036. PARKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 285 F. 3d 1133.

No. 02–7037. BECKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 957.

No. 02–7040. GRESHAM *v.* CHANDLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7042. HAMILTON *v.* MACK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 211.

No. 02–7044. JACKSON, aka LNU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 720.

No. 02–7047. GARDNER, aka ARCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 586.

No. 02–7051. CARTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 418.

No. 02–7052. WOODFIN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 374.

No. 02–7058. SKAMFER *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–7059. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7060. DIAZ-PABON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–7071. CHAPMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7074. HUSS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 124.

No. 02–7077. ESENOWO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 846.

No. 02–7078. FAIRCLOTH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 620.

No. 02–7084. ROGERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 619.

No. 02–7085. TUCKER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–7086. LAWSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 02–7088. RUCKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 928.

No. 02–7090. HOLMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7091. CAMACHO-LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7093. DELGADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 288 F. 3d 49.

No. 02–7098. PEPPERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 302 F. 3d 120.

No. 02–7102. BOYD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7103. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 55.

No. 02–7104. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 805.

No. 02–7106. ZAMORA-CORREA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 938.

No. 02–7107. HAMMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 545.

No. 02–7108. GORDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 290 F. 3d 539.

No. 02–7109. GUTIERREZ-MONTEMAYOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 226.

No. 02–7113. MIRANDA-SANCHEZ, AKA LEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 848.

No. 02–7114. EVANS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 330.

No. 02–7116. CELIAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 992.

No. 02–7119. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–7120. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 678.

No. 02–7123. GAONA-SEPULVEDA *v.* UNITED STATES; and
No. 02–7149. MENDEZ-ZAMORA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 296 F. 3d 1013.

No. 02–7125. RISER *v.* POLLITT, JUDGE, MUNICIPAL COURT, FRANKLIN COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 912.

No. 02–7126. MCLEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 721.

No. 02–7132. CLAYTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7133. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 712.

No. 02–7137. DIPIETRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 957.

No. 02–7138. HUNTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 291 F. 3d 1302.

No. 02–7139. HARTZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 958.

No. 02–7143. ATWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 618.

No. 02–7145. MCCLAIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 426.

No. 02–7146. SCOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 372.

No. 02–7148. EMBERTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 292.

No. 02–7152. ORTLOFF *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–7156. BECK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–7158. OAKLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7160. FIELDS *v.* PURDY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 225.

No. 02–7161. KEYS, AKA BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 731.

No. 02–7162. LUCERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 299.

No. 02–7163. JORDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 298 F. 3d 523.

No. 02–7165. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 299 F. 3d 250.

No. 02–7166. VASQUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 560.

No. 02–7167. ALCALA-NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 127.

No. 02–7173. MCRAE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 300 F. 3d 415.

No. 02–7176. BAILEY, AKA ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 259.

No. 02–7179. INGRAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 327.

No. 02–7181. DALE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7185. RODRIGUEZ-ALVAREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 627.

No. 02–7186. WOODS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 368.

No. 02–7191. NUNEZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 492.

No. 02–7192. WHEAT *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 441.

No. 02–7199. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 992.

No. 02–7202. GUSTAVE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7219. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 55.

No. 02–7221. COCHRAN *v.* PUBLIC UTILITIES COMMISSION OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 96 Ohio St. 3d 1448, 771 N. E. 2d 261.

No. 02–7223. CUMMINGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 618.

No. 02–7224. CHAMBERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 41 Fed. Appx. 525.

No. 02–7225. WALSH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 299 F. 3d 729.

No. 02–7228. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 114.

No. 02–7232. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 156.

No. 02–7235. DABNEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–64. UNITED STATES *v.* MCGOWAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 274 F. 3d 1251.

No. 02–112. UNITED STATES *v.* PINEDA-TORRES. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 287 F. 3d 860.

No. 02–274. WHITE, INDEPENDENT COUNSEL *v.* UNITED STATES ET AL. C. A. 5th Cir. Motion of National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 285 F. 3d 378.

No. 02–289. JOHNSON ET AL. *v.* I/O CONCEPTS, INC. C. A. Fed. Cir. Motions of Defenders of Property Rights et al. and Printer Works, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 30 Fed. Appx. 982.

No. 02–297. DOYLE *v.* HYDRO NUCLEAR SERVICES ET AL. C. A. 3d Cir. Motion of Linda Tripp et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 285 F. 3d 243.

No. 02–482. DESERET BOOK CO. ET AL. *v.* JACOBSEN. C. A. 10th Cir. Motion of Authors Guild, Inc., et al. for leave to file a

brief as *amici curiae* granted. Certiorari denied. Reported below: 287 F. 3d 936.

No. 02–493. CARRANZA-HERNANDEZ *v.* ALTUS FINANCE CORP. ET AL.; and CARRANZA-HERNANDEZ ET AL. *v.* ARTEMIS S. A. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 33 Fed. Appx. 364 (first judgment); 34 Fed. Appx. 593 (second judgment).

No. 02–517. AIG LIFE INSURANCE CO. *v.* PADFIELD. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 290 F. 3d 1121.

No. 02–570. WALSTON *v.* LOCKHART ET AL. Ct. App. Tex., 10th Dist. Motion of Public Citizen for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 62 S. W. 3d 257.

No. 02–571. PATTERSON ET AL. *v.* BOLLINGER ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 02–7529 (02A429). KING *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 831 So. 2d 143.

Rehearing Denied

No. 01–1678. RAYBURN *v.* SECURITIES AND EXCHANGE COMMISSION, *ante*, p. 816;

No. 01–1688. FRIDAY ET UX. *v.* WHITTLE AND ROPER REAL ESTATE FIRM ET AL., *ante*, p. 816;

No. 01–1690. HILL *v.* AMERICAN MEDICAL ASSN. ET AL., *ante*, p. 816;

No. 01–1745. GOODIN *v.* CITY OF JACKSONVILLE ET AL., *ante*, p. 819;

No. 01–1770. HEMPHILL *v.* MCNEIL-PPC, INC., *ante*, p. 820;

No. 01–1794. MELENDREZ *v.* SEIB ET AL., *ante*, p. 821;

No. 01–1827. FACE, VIRGINIA COMMISSIONER OF FINANCIAL INSTITUTIONS, ET AL. *v.* NATIONAL HOME EQUITY MORTGAGE ASSN., *ante*, p. 802;

No. 01–9400. GONZALEZ ET UX. *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT; GONZALEZ ET UX. *v.* RIDDLE ET AL.; and GONZALEZ ET UX. *v.* ELDORADO BANK ET AL., 535 U. S. 1121;

No. 01–9880. RASTEN *v.* BOURNEWOOD HOSPITAL ET AL., *ante*, p. 829;

No. 01–9996. JAMES *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, *ante*, p. 831;

No. 01–10077. WINKE *v.* WINKE, *ante*, p. 834;

No. 01–10083. BATOR *v.* HALLOCK ELECTRIC ET AL., *ante*, p. 834;

No. 01–10138. WHIGHAM *v.* DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT ET AL., *ante*, p. 835;

No. 01–10282. LUCAS *v.* GEORGIA, *ante*, p. 840;

No. 01–10286. PAYNE *v.* WEST VIRGINIA PUBLIC SERVICE COMMISSION ET AL., *ante*, p. 840;

No. 01–10290. HAYES *v.* UNITED STATES, *ante*, p. 840;

No. 01–10301. COMPTON *v.* OREGON, *ante*, p. 841;

No. 01–10437. GRIMES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 844;

No. 01–10472. RASTEN *v.* GOLDBERG ET AL., *ante*, p. 829;

No. 01–10526. THOMAS *v.* MCLEMORE, WARDEN, *ante*, p. 847;

No. 01–10783. GUY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 863;

No. 01–10803. ARMSTRONG *v.* COMMODITY FUTURES TRADING COMMISSION ET AL., *ante*, p. 864;

No. 01–10804. THIBEAUX *v.* KLEMAN, *ante*, p. 864;

No. 01–10906. MCPHERSON *v.* GEORGIA, *ante*, p. 870;

No. 01–10919. THOMPSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 871;

No. 01–10968. RASTEN *v.* TOWN OF BROOKLINE, MASSACHUSETTS, ET AL., *ante*, p. 874;

No. 02–4. BRUETMAN *v.* HERBSTEIN, *ante*, p. 878;

No. 02–68. GIULIANI *v.* UNITED STATES ET AL., *ante*, p. 882;

No. 02–101. JOHN STREET LEASEHOLD, LLC *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL., *ante*, p. 883;

No. 02–104. IN RE PERRY, *ante*, p. 811;

No. 02–224. KNOX *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 887;

No. 02–344. WARMBRUN *v.* SAMSON, ATTORNEY GENERAL OF NEW JERSEY, *ante*, p. 950;

No. 02–5017. BUSBY *v.* INTERNAL REVENUE SERVICE, *ante*, p. 890;

No. 02–5082. YOUNG *v.* HUGHS ET AL., *ante*, p. 893;

No. 02–5102. BORTH *v.* WALKER ET AL., *ante*, p. 894;

No. 02–5131. GONZALEZ ET VIR *v.* STATE BAR OF CALIFORNIA ET AL., *ante*, p. 896;

No. 02–5152. LANGWORTHY *v.* GOICOCHEA, *ante*, p. 898;

No. 02–5238. POTTS *v.* DEWEESE ET AL., *ante*, p. 903;

No. 02–5322. CONNER *v.* HEAD, WARDEN, *ante*, p. 908;

No. 02–5377. RASTEN *v.* GELBOND, *ante*, p. 911;

No. 02–5396. WHITAKER *v.* VIRGINIA ET AL., *ante*, p. 913;

No. 02–5412. IN RE WOJNICZ, *ante*, p. 811;

No. 02–5439. BUFORD *v.* EMPLOYEES OF SOLANO STATE PRISON ET AL., *ante*, p. 915;

No. 02–5500. KENLEY *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 919;

No. 02–5562. JAMES *v.* UNITED STATES, *ante*, p. 923;

No. 02–5581. SHORE *v.* FEDERAL EXPRESS CORP., *ante*, p. 924;

No. 02–5641. GLEBOCKI *v.* CITY OF CHICAGO, ILLINOIS, ET AL., *ante*, p. 952;

No. 02–5646. WRIGHT *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, *ante*, p. 953;

No. 02–5658. MURDOCK *v.* MICHIGAN DEPARTMENT OF TREASURY, *ante*, p. 927;

No. 02–5719. IN RE FINK, *ante*, p. 946;

No. 02–5760. BURNS *v.* FLORIDA ET AL., *ante*, p. 955;

No. 02–5783. JARRETT *v.* ASHCROFT, ATTORNEY GENERAL, ET AL., *ante*, p. 931;

No. 02–6094. DOUGHERTY *v.* UNITED STATES, *ante*, p. 940;

No. 02–6124. CONTEH *v.* KANDARIAN, *ante*, p. 961; and

No. 02–6157. BEATON-PAEZ *v.* UNITED STATES, *ante*, p. 962. Petitions for rehearing denied.

DECEMBER 3, 2002

Certiorari Denied

No. 02–7659. KING *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 312 F. 3d 1365.

DECEMBER 6, 2002

Dismissal Under Rule 46

No. 02–7134. HINNANT *v.* JONES ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.

Certiorari Denied

No. 02–7530 (02A430). BOTTOSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 833 So. 2d 693.

DECEMBER 9, 2002

Miscellaneous Orders

No. 02M13. PIGNATIELLO *v.* UNITED STATES. Renewed motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 02–5795. RASTEN *v.* NORFOLK COUNTY, MASSACHUSETTS. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 945] denied.

No. 02–5307. IN RE PATTERSON-BEGGS;
No. 02–6207. IN RE PATTERSON-BEGGS;
No. 02–7342. IN RE BOITNOTT;
No. 02–7391. IN RE MILES;
No. 02–7403. IN RE PERKINS;
No. 02–7420. IN RE MYERS; and
No. 02–7436. IN RE GERMAINE. Petitions for writs of habeas corpus denied.

No. 02–7840 (02A477). IN RE BOTTOSON. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

No. 02–6747. IN RE TOPPS; and
No. 02–6803. IN RE TURNER. Petitions for writs of mandamus denied.

Certiorari Denied

No. 01–1179. BANK OF AMERICA, N. A., INDIVIDUALLY, AND AS SUCCESSOR TO SECURITY PACIFIC NATIONAL BANK *v.* ABRAHAM ET AL.; and

No. 01–1187. NORCAL WASTE SYSTEMS, INC., ET AL. *v.* ABRAHAM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 265 F. 3d 811.

No. 01–1623. IN RE WISCHKAEMPER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 832.

No. 02–77. BARRON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–155. GALLEGOS *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 283 F. 3d 1309.

No. 02–194. FLEMING *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 30 Fed. Appx. 946.

No. 02–269. PEREZ *v.* MIAMI-DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 53.

No. 02–300. EPPENDORF-NETHELER-HINZ GMBH *v.* RITTER GMBH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 289 F. 3d 351.

No. 02–338. UNITED FEDERAL LEASING, INC. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 672.

No. 02–374. OBERHAUSER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 827.

No. 02–442. UNITED STATES *v.* SCIALABBA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 282 F. 3d 475.

No. 02–519. SLOAN *v.* CHRISTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 523.

No. 02–521. SCHUEHLE *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 289 F. 3d 832.

No. 02–522. GIESBERG *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 288 F. 3d 268.

No. 02–526. ONINK ET UX. *v.* CARDELUCCI. C. A. 9th Cir. Certiorari denied. Reported below: 285 F. 3d 1231.

No. 02–546. ERWIN *v.* FEDERAL METALS CREDIT UNION. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 555.

No. 02–548. CZARINA, LLC *v.* KEMPER DE MEXICO, CAMPANIA DE SEGUROS, S. A. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 598.

No. 02–550. STERRITT ET AL. *v.* CONTINENTAL INVESTMENT CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–551. PRIMM *v.* COUNTRY COS. Ct. App. Wash. Certiorari denied. Reported below: 108 Wash. App. 1054.

No. 02–552. TOWN OF FERRIDAY, LOUISIANA *v.* MARTELLO ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 813 So. 2d 467.

No. 02–556. PATEL *v.* CITY OF GILROY, CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 97 Cal. App. 4th 483, 118 Cal. Rptr. 2d 354.

No. 02–559. CUTRONA ET AL. *v.* ESTATE OF SORRELLS, BY AND THROUGH ITS INDEPENDENT EXECUTRIX, THOSTENSON, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 325.

No. 02–602. HAYNES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 375.

No. 02–646. MINNIECHESKE ET AL. *v.* SHAWANO COUNTY, WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 02–647. BANKS *v.* JEFFERSON-SMURFIT. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 610.

No. 02–704. DELGADO-GARIBAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–716. HIVELY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–5888. BUNCH *v.* WHITE, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 43.

No. 02–5920. LAWLEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 102, 38 P. 3d 461.

No. 02–6234. KING *v.* SMITH, SUPERINTENDENT, EASTERN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 282.

No. 02–6453. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 293 F. 3d 970.

No. 02–6508. TURNER *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 649.

No. 02–6728. SZERLIP *v.* OHIO. Ct. App. Ohio, Knox County. Certiorari denied.

No. 02–6729. REYES GONZALES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6730. FLETCHER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6731. HULL *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6732. HERRINGTON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 814 So. 2d 1057.

No. 02–6734. GRAY *v.* MARYLAND PAROLE COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 561.

No. 02–6736. HIGHERS *v.* TYSZKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6740. JOHNSON *v.* FREEBURN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 802.

No. 02–6752. CIPRIANO *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 680.

No. 02–6761. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6762. ALTVATER *v.* SUPREME COURT OF NEW YORK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 521.

No. 02–6763. LORY *v.* STENDER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6765. DAY *v.* SPRATLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 183.

No. 02–6766. SAPEU *v.* GAITHER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–6775. MERRIWEATHER *v.* HOFBAUER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–6776. RIVERA-CARRILLO *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied.

No. 02–6784. MATTHEWS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 45 P. 3d 907.

No. 02–6785. NELSON *v.* TURNER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 02–6786. MOATS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–6793. BANSHEE, AKA BUTLER *v.* GUNN, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 370.

No. 02–6796. KULAS *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6797. BUTLER *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 936.

No. 02–6798. PENIGAR *v.* KLEIN ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–6816. SPEARS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 02–6817. WILLIAMS *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–6818. THOMPSON *v.* BOUCHARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6819. WRIGHT *v.* CASTRO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6843. GAUDET *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 835.

No. 02–6854. MCCLAINE BEY *v.* BOUCHARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6866. LOCKHART *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–6887. AIKENS *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 709.

No. 02–6890. SMITH *v.* SOLOMON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6910. WELLS *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6945. HOGAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–6952. HUGGINS *v.* BOYETTE, CORRECTIONAL ADMINISTRATOR I, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 175.

No. 02–6966. PACE WHITE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–6999. PRESLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7005. BEASLEY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7009. LEEPER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 356 N. C. 55, 565 S. E. 2d 1.

No. 02–7056. RODRIGUEZ *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7072. ANGELINI *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 888.

No. 02–7099. OGUNDE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 508.

No. 02–7131. CAMPBELL *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 917.

No. 02–7147. AMBORT *v.* UNITED STATES; and
No. 02–7174. BENSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 263.

No. 02–7184. BIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7189. WEBBER *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–7212. NEWSOM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 144.

No. 02–7217. JENNETTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 295 F. 3d 290.

No. 02–7234. ARANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 488.

No. 02–7242. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1308.

No. 02–7244. HARVEY, AKA BROWN, AKA PATRICK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 32 Fed. Appx. 617.

No. 02–7247. MARSHALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 626.

No. 02–7253. MCDONALD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 330.

No. 02–7254. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 876.

No. 02–7256. LOPEZ-IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 98.

No. 02–7257. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 990.

No. 02–7259. MEJIA-DELGADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 575.

No. 02–7263. KERR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–7264. MALDONADO-LOPEZ, AKA MALDONADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–7265. PERALES-VILLANUEVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7266. PRICHARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 731.

No. 02–7267. MANON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 602.

No. 02–7269. AYALA-GUZMAN, AKA SANCHEZ, AKA BRAVO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7270. MENDOZA-CARILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 590.

No. 02–7271. PARVIZI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 145.

No. 02–7272. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 541.

No. 02–7274. WATSON *v.* UNITED STATES; and

No. 02–7290. GOLDWIRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 957.

No. 02–7276. ORTLOFF *v.* STIFF, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–7280. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 02–7281. VOGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 321.

No. 02–7282. EDGAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 304 F. 3d 1320.

No. 02–7287. GRANGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 918.

No. 02–7288. GRAHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 828.

No. 02–7289. GINDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 589.

No. 02–7301. ROSARIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–7312. COCHRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7314. CASTRO-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 488.

No. 02–7315. NACACIO AMU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 571.

No. 02–7316. DOE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 418.

No. 02–7317. POWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–7320. SAMUEL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 296 F. 3d 1169.

No. 02–7324. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 643.

No. 02–7326. GONZALEZ-CRUZ *v.* UNITED STATES; AVINA-LOPEZ *v.* UNITED STATES; JAVIER-LOPEZ *v.* UNITED STATES (Reported below: 43 Fed. Appx. 116); LOPEZ-LOPEZ *v.* UNITED STATES; MARTINEZ-CRUZ, AKA MARTINEZ-AGUILAR, AKA CRUZ-MARTINEZ *v.* UNITED STATES; MENDOZA-DIAZ *v.* UNITED STATES; MENDOZA-GUTIERREZ, AKA MONTALVAN-GUERRA *v.* UNITED STATES; MENDOZA-REYES *v.* UNITED STATES; RODRIGUEZ-VENEGAS *v.* UNITED STATES; SANDOVAL-NAVARRO *v.* UNITED STATES; and SANTANA-LOSANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–7331. FORD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 633.

No. 02–7332. HUGGINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 299 F. 3d 1039.

No. 02–7333. HAMILTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 185.

No. 02–7334. BRUMFIELD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 724.

No. 02–7336. VILLAFRANCA-BENAVIDES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7339. WARDRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 262.

No. 02–7343. RIVERA-CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 928.

No. 02–7348. COLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 885.

No. 02–7357. LIQUORI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 686.

No. 02–7381. CREASEY *v.* TIBBALS, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 96 Ohio St. 3d 1452, 772 N. E. 2d 123.

No. 01–1605. IN RE TAYLOR; and IN RE HARRIS ET AL. C. A. 5th Cir. Motion of National Mental Health Association et al. for leave to file a brief as *amici curiae* granted. Certiorari de-

nied. Reported below: 278 F. 3d 459 (first judgment); 31 Fed. Appx. 838 (second judgment).

No. 02–165. BORGNER ET AL. *v.* FLORIDA BOARD OF DENTISTRY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 284 F. 3d 1204.

JUSTICE THOMAS, with whom JUSTICE GINSBURG joins, dissenting.

This case presents an excellent opportunity to clarify some oft-recurring issues in the First Amendment treatment of commercial speech and to provide lower courts with guidance on the subject of state-mandated disclaimers. I would vote to grant the writ of certiorari.

I

Borgner is a Florida-licensed dentist who practices general dentistry with an emphasis on implants. In light of his specialty, Dr. Borgner advertises himself as a member of the American Academy of Implant Dentistry (AAID), a fellow of the AAID, and a Diplomate of the AAID's certifying board, the American Board of Oral Implantology/Implant Dentistry. The AAID is a national dental organization whose members may earn credentials in the field of implant dentistry. The organization's primary purpose is the enhancement of its members' knowledge, skill, and expertise in that field. Implant dentistry and organizations focusing on this specialty, however, are not recognized by the American Dental Association (ADA) or the Florida Board of Dentistry (Board).

The current version of § 466.0282 of the Florida Statutes allows Florida-licensed dentists to advertise a specialty practice or accreditation by a bona fide certifying organization other than the ADA or the Board, but requires that the advertisement disclose that the indicated specialty or certifying organization is not state approved. Thus, Dr. Borgner may advertise a "practice emphasis" in implant dentistry, but must include the following state-prescribed proviso in any such advertisement, be it a business card, yellow pages ad, or his letterhead:

> "'[IMPLANT DENTISTRY] IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.'" Fla. Stat. Ann. § 466.0282(3) (2001).

Likewise, if Dr. Borgner wishes to "acknowledge or otherwise reference" his AAID credentials in the announcement, he must add a second disclaimer:

> "'[THE AMERICAN ACADEMY OF IMPLANT DENTISTRY] IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.'" *Ibid.*

Dr. Borgner brought an action challenging the statute on First Amendment grounds, and the District Court granted summary judgment in his favor. The Court of Appeals for the Eleventh Circuit reversed, applying the test of *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557 (1980). *Borgner* v. *Brooks*, 284 F. 3d 1204 (2002). Noting that the speech in question concerns lawful activity and that the Board concedes that the speech is only potentially, not inherently, misleading, the court held that the State has a valid and substantial interest in regulating the dental profession, ensuring that consumers are not misled by ads, and protecting citizens from unqualified and incompetent dentists. The court also held that the State demonstrated, by introducing into evidence the results of two telephone surveys, that the harms it recites are real and that the restriction will in fact alleviate those harms to a material degree. Finally, the court found the disclaimer requirements to be no more extensive than necessary to protect citizens from unqualified and incompetent dentists, and to establish standards and uniform criteria for dentist certification.

II

Dr. Borgner seeks certiorari, making two compelling claims: that the decision below is inconsistent with our jurisprudence in this area and that the lower courts need guidance on the permissibility and scope of state-mandated disclaimers.

Specifically, Dr. Borgner, and the dissent below, raise serious questions about the validity of the surveys on which the Eleventh Circuit relied, and, hence, about their sufficiency for the purposes of the third prong of the *Central Hudson* test. Dr. Borgner also raises doubts about whether the Eleventh Circuit's conclusion is consistent with *Ibanez* v. *Florida Dept. of Business and Professional Regulation, Bd. of Accountancy*, 512 U. S. 136 (1994), where, in holding that the respondent's decision censuring an at-

torney for advertising her accounting credentials violated the First Amendment, we relied on the absence of evidence of consumer confusion and on the fact that consumers were able to verify the petitioner's credentials.

Even if the problem that these surveys purport to identify exists, it is unclear whether forcing upon dentists a government-scripted disclaimer is an appropriate response. *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626 (1985), which upheld the requirement for a disclaimer in the context of advertising about contingency fees, is not very helpful to the Board. This is so because the advertisement in *Zauderer* was misleading as written and because the government did not mandate any particular form, let alone the exact words, of the disclaimer.

Here, not only does the State force a specific disclaimer on Dr. Borgner, but the "detail required in the disclaimer . . . effectively rules out notation of the [AAID] designation on a business card or letterhead, or in a yellow pages listing," *Ibanez*, *supra*, at 146–147. If that is the case, the State may be unable to satisfy the fourth prong of *Central Hudson*, which requires that the regulation be no more extensive than necessary to serve the proffered governmental interest.

Another troubling aspect of this case is that the mandated disclaimer is likely to foster *more* confusion. As Judge Hill observed, a consumer, upon reading that AAID is "'NOT'" a "'BONA FIDE'" specialty, "may well conclude that the AAID is a bogus organization or diploma mill—neither of which conclusions is justified." 284 F. 3d, at 1219 (dissenting opinion). If the disclaimer creates confusion, rather than eliminating it, the only possible constitutional justification for this speech regulation is defeated.

Our decisions have not presumptively endorsed government-scripted disclaimers or sufficiently clarified the nature and the quality of the evidence a State must present to show that the challenged legislation directly advances the governmental interest asserted. In my judgment, this case warrants review. Although disclaimers across industries and States are not likely to be exact replicas of one another, our resolution of this case can provide needed guidance on this important issue.

Accordingly, I respectfully dissent from the denial of certiorari.

No. 02–520. HOPEMAN BROTHERS, INC. *v.* ACKER ET AL. Sup. Ct. Va. Motion of Coalition for Asbestos Justice, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 264 Va. 424, 569 S. E. 2d 409.

No. 02–541. NASSAU COUNTY, NEW YORK, ET AL. *v.* SHAIN ET AL. C. A. 2d Cir. Motions of Corrections Captains' Association of City of New York and Correction Officers' Benevolent Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 273 F. 3d 56.

No. 02–555. FORRESTER ET AL. *v.* NEW JERSEY DEMOCRATIC PARTY, INC., ET AL. Sup. Ct. N. J. Motion of California Secretary of State for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 175 N. J. 172 and 178, 814 A. 2d 1025 and 1028.

No. 02–6743. LYNCH *v.* NATIONAL CITY MORTGAGE. Ct. App. Ohio, Cuyahoga County. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–7863 (02A482). CARTER *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. Reported below: 356 N. C. 617, 574 S. E. 2d 468.

No. 02–7864 (02A478). CARTER *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. Reported below: 356 N. C. 617, 574 S. E. 2d 468.

Rehearing Denied

No. 01–10063. DANNER *v.* DILL, *ante*, p. 833;

No. 01–10441. FAISON *v.* FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 844;

No. 01–10527. STIGGERS *v.* FLEET MORTGAGE CORP., *ante*, p. 847;

No. 01–10545. COOPER *v.* UNITED STATES, *ante*, p. 848;

No. 01–10904. ALEXANDER *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 870;

No. 01–10989. HEIM *v.* BUSH, PRESIDENT OF THE UNITED STATES, *ante*, p. 875;

No. 02–157. HOGAN *v.* POTTER, POSTMASTER GENERAL, ET AL., *ante*, p. 886;

No. 02–180. MELENDREZ *v.* LOZA ET AL., *ante,* p. 948;

No. 02–285. HERSHFIELD *v.* COUNTY OF KING GEORGE, VIRGINIA, *ante,* p. 975;

No. 02–5416. GIEGLER *v.* HONE, *ante,* p. 914;

No. 02–5418. FAULKNER *v.* UNITED STATES, *ante,* p. 914;

No. 02–5419. IN RE HUMPHREY, *ante,* p. 811;

No. 02–5553. NAGY *v.* UNITED STATES, *ante,* p. 922;

No. 02–5615. SCOON *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, *ante,* p. 951;

No. 02–5634. PENDER *v.* UNION COUNTY ET AL., *ante,* p. 952;

No. 02–5756. WINKE *v.* IOWA DISTRICT COURT FOR LEE COUNTY ET AL., *ante,* p. 955;

No. 02–5824. MICHAEL *v.* ARIZONA, *ante,* p. 956;

No. 02–5996. WINKER *v.* MCDONNELL DOUGLAS CORP., *ante,* p. 979;

No. 02–6088. WATERS *v.* COMMISSIONER OF INTERNAL REVENUE, *ante,* p. 939; and

No. 02–6308. IN RE WOJNICZ, *ante,* p. 946. Petitions for rehearing denied.

DECEMBER 10, 2002

Miscellaneous Order

No. 02–7841 (02A476). IN RE MCCRACKEN. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

DECEMBER 11, 2002

Certiorari Denied

No. 02–7452 (02A475). COLLIER *v.* COCKRELL, 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: 300 F. 3d 577.

No. 02–7909 (02A491). WILLIAMS *v.* MISSISSIPPI. Sup. Ct. Miss. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 12, 2002

Miscellaneous Order

No. 02–7896 (02A485). IN RE NEILL. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 02–879 (02A492). JOHNSON *v.* ALABAMA. Sup. Ct. Ala. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

No. 02–7897 (02A486). NEILL *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 16, 2002

Certiorari Granted—Vacated and Remanded

No. 01–801. HARVEY, INDIVIDUALLY AND AS BENEFICIARY OF THE ARTHUR HARVEY, M. D. INC., EMPLOYEE DEFINED BENEFIT PLAN, ET AL. *v.* SALOMON SMITH BARNEY, INC. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Howsam* v. *Dean Witter Reynolds, Inc.*, *ante*, p. 79. Reported below: 260 F. 3d 1302.

Miscellaneous Orders

No. 02A449. CHABAD OF SOUTHERN OHIO ET AL. *v.* CITY OF CINCINNATI, OHIO. Motion of the City of Cincinnati to vacate order entered by JUSTICE STEVENS [*post*, p. 1501] denied.

No. D–2335. IN RE DISCIPLINE OF KOVLER. Mark A. Kovler, of White Plains, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 00–1471. KENTUCKY ASSOCIATION OF HEALTH PLANS, INC., ET AL. *v.* MILLER, COMMISSIONER, KENTUCKY DEPARTMENT

OF INSURANCE. C. A. 6th Cir. [Certiorari granted, 536 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of American Medical Association for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 01–188. PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA *v.* CONCANNON, COMMISSIONER, MAINE DEPARTMENT OF HUMAN SERVICES, ET AL. C. A. 1st Cir. [Certiorari granted, 536 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1572. COOK COUNTY, ILLINOIS *v.* UNITED STATES EX REL. CHANDLER. C. A. 7th Cir. [Certiorari granted, 536 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–1269. CITY OF CUYAHOGA FALLS, OHIO, ET AL. *v.* BUCKEYE COMMUNITY HOPE FOUNDATION ET AL. C. A. 6th Cir. [Certiorari granted, 536 U. S. 938.] Motion of American Planning Association for leave to file a brief as *amicus curiae* denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of the Solicitor General to allow David B. Salmons to present oral argument *pro hac vice* granted.

No. 01–1368. NEVADA DEPARTMENT OF HUMAN RESOURCES ET AL. *v.* HIBBS ET AL. C. A. 9th Cir. [Certiorari granted, 536 U. S. 938.] Motion of the Solicitor General for divided argument granted. Motion of petitioners Nevada Department of Human Resources et al. and State of Alabama for leave for State of Alabama to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 01–1500. CLAY *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 536 U. S. 957 and 981.] Motion of the Solicitor General for divided argument granted.

No. 01–1806. ILLINOIS EX REL. RYAN, ATTORNEY GENERAL OF ILLINOIS *v.* TELEMARKETING ASSOCIATES, INC., ET AL. Sup. Ct. Ill. [Certiorari granted, *ante*, p. 999.] Motion of respondent

Telemarketing Associates to strike portions of petitioner's joint appendix designations denied.

No. 02–258. JINKS *v.* RICHLAND COUNTY, SOUTH CAROLINA, ET AL. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 972.] Motion of the parties to dispense with printing the joint appendix granted.

No. 02–563. AMERICAN COALITION OF LIFE ACTIVISTS ET AL. *v.* PLANNED PARENTHOOD OF THE COLUMBIA/WILLAMETTE, INC., ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–5664. SELL *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 999.] Motion for appointment of counsel granted, and it is ordered that Barry A. Short, Esq., of St. Louis, Mo., be appointed to serve as counsel for petitioner in this case.

No. 02–7514. IN RE CALIA;
No. 02–7521. IN RE JOHNSON; and
No. 02–7539. IN RE WILKINS. Petitions for writs of habeas corpus denied.

No. 02–564. IN RE JONES; and
No. 02–688. IN RE HARRAH. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 01–10814. SALVADOR CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 904.

No. 01–10836. JACKSON *v.* STERNES, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–253. UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO *v.* SILER-KHODR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 261 F. 3d 542.

No. 02–315. FRIEDMAN'S INC., DBA FRIEDMAN'S JEWELERS, ET AL. *v.* WEST VIRGINIA EX REL. DUNLAP. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 211 W. Va. 549, 567 S. E. 2d 265.

No. 02–424. SNOWDEN *v.* CHECKPOINT CHECK CASHING ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 290 F. 3d 631.

No. 02–498. ARTHUR ANDERSEN LLP *v.* BERGER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 295 F. 3d 380.

No. 02–514. SMITH *v.* INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS. C. A. 5th Cir. Certiorari denied. Reported below: 296 F. 3d 380.

No. 02–558. GREEN, INDIVIDUALLY AND AS TRUSTEE, ET AL. *v.* NUVEEN ADVISORY CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 295 F. 3d 738.

No. 02–561. BROWNE ET AL. *v.* BAYLESS, SECRETARY OF STATE OF ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 202 Ariz. 405, 46 P. 3d 416.

No. 02–565. SALIM OLEOCHEMICALS *v.* M/V SHROPSHIRE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 626.

No. 02–567. HOLLANDER ET VIR *v.* SANDOZ PHARMACEUTICALS CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 289 F. 3d 1193.

No. 02–568. JONES *v.* TEXAS ET AL. Ct. App. Kan. Certiorari denied. Reported below: 30 Kan. App. 2d ——, 43 P. 3d 902.

No. 02–576. CASE & POINT, INC., DBA BARE FACTS, ET AL. *v.* CITY OF DALLAS, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 295 F. 3d 471.

No. 02–584. MAGERS, TRUSTEE IN BANKRUPTCY FOR BONDS DISTRIBUTING CO., INC. *v.* BONDS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 895.

No. 02–591. QUINN ET AL. *v.* BANK ONE, N. A. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 226.

No. 02–596. WINSTON *v.* KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES. Sup. Ct. Kan. Certiorari denied. Reported below: 274 Kan. 396, 49 P. 3d 1274.

No. 02–601. BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT ET AL. *v.* VOGT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 294 F. 3d 684.

No. 02–604. ARIA ET AL. *v.* UNITED STATES, ON ITS OWN BEHALF AND FOR THE BENEFIT OF THE FORT MOJAVE INDIAN

TRIBE. C. A. 9th Cir. Certiorari denied. Reported below: 291 F. 3d 1056.

No. 02–618. INTERNATIONAL SHIPBREAKING LTD., L. L. C. *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 653.

No. 02–652. LIGON *v.* BARTIS. Ct. App. Ga. Certiorari denied. Reported below: 254 Ga. App. 154, 561 S. E. 2d 831.

No. 02–667. YORK *v.* ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 286 F. 3d 122.

No. 02–701. WEAVER *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 34 Fed. Appx. 788.

No. 02–708. RAGBIR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 788.

No. 02–713. MITTAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 20.

No. 02–718. RUSSELL KIKENBORG, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF RUSSELL *v.* NEW YORK CITY HEALTH AND HOSPITALS CORP. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 291 App. Div. 2d 281, 738 N. Y. S. 2d 37.

No. 02–719. KRAJEWSKI *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 255 Wis. 2d 98, 648 N. W. 2d 385.

No. 02–720. CAMPA ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 300 F. 3d 1361.

No. 02–730. MORLEY *v.* BRADY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 523.

No. 02–756. CHAVEZ-ZARZA *v.* UNITED STATES; LUA-GARCIA *v.* UNITED STATES; and OCHOA-GRANADOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106 (first and third judgments) and 107 (second judgment).

No. 02–757. MILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 F. 3d 1341.

No. 02–758. METRO EAST CENTER FOR CONDITIONING AND HEALTH *v.* QWEST COMMUNICATIONS INTERNATIONAL, INC. C. A. 7th Cir. Certiorari denied. Reported below: 294 F. 3d 924.

No. 02–768. METZ *v.* SUPREME COURT OF OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 228.

No. 02–5787. RADLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 90.

No. 02–5863. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 187.

No. 02–6140. SCHWEBKE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 253 Wis. 2d 1, 644 N. W. 2d 666.

No. 02–6354. DELLINGER ET AL. *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 79 S. W. 3d 458.

No. 02–6678. SMITH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 838 So. 2d 413.

No. 02–6738. FRANCIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 808 So. 2d 110.

No. 02–6824. EDWARDS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–6825. CAIN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 02–6826. CHANNELS *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 153.

No. 02–6834. HIGHTOWER *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–6835. FRAZIER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 824 So. 2d 330.

No. 02–6840. FISHER *v.* BUTLER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 153.

No. 02–6846. MCMILLAN *v.* FISHER ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–6852. MOORE *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–6858. ARMSTRONG *v.* COBB COUNTY WATER SYSTEM. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 969.

No. 02–6863. POWELL *v.* MARIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–6864. BRITTAIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–6865. LAWS *v.* FATKIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 366.

No. 02–6867. KUYKENDALL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6873. WYZYKOWSKI *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–6874. VICTOR *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 02–6877. JONES *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 714.

No. 02–6888. TORRES ET AL. *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. (two judgments). C. A. 9th Cir. Certiorari denied.

No. 02–6889. KOEHL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 651.

No. 02–6894. WHITE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 817 So. 2d 799.

No. 02–6902. COOK *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 295 F. 3d 517.

No. 02–6915. GARCIA *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 279.

No. 02–6950. VALDERRAMA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–6965. WOODS *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6983. N'GUESSAN ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied.

No. 02–6985. HAYMAN *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–6991. PRATTS *v.* FAUNCE ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7003. FRANKLIN *v.* BOCK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7007. ATKINSON *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied.

No. 02–7028. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7031. SALADINO *v.* SENKOWSKI, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7041. GRISSO *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–7049. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7062. MOSS *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 286 F. 3d 851.

No. 02–7065. DIXON, AKA MOHHOMMED *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7066. NORTON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 02–7069. SYKES *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7110. BULLOCK *v.* CARVER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 297 F. 3d 1036.

No. 02–7171. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 02–7172. MOTEN *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7175. KRAUSE *v.* WADDINGTON, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 02–7177. SCALES *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7178. HILL *v.* MALOLFF, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 668.

No. 02–7180. HUFF *v.* HINKLE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 02–7183. KING *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 291 F. 3d 539.

No. 02–7204. ARNOLD *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7208. AEID *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 296 F. 3d 58.

No. 02–7284. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7285. FORTE *v.* REILLY, ATTORNEY GENERAL OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 43 Fed. Appx. 395.

No. 02–7313. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 288 F. 3d 1263.

No. 02–7328. NAJJAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 300 F. 3d 466.

No. 02–7329. OYEKOYA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 28 Fed. Appx. 82.

No. 02–7349. PINEDA CONTRERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 299 F. 3d 420.

No. 02–7350. DUNN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7351. PELCHAT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 306.

No. 02–7356. FLINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7359. BARO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7362. CELESTINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 586.

No. 02–7363. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 629.

No. 02–7364. ESPINOSA-ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 304.

No. 02–7365. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 295.

No. 02–7366. BATTLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–7368. ACKWITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 636.

No. 02–7370. KELLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 291.

No. 02–7371. JAMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 935.

No. 02–7372. MACIAS MADRIAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 462.

No. 02–7373. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 134.

No. 02–7374. RODRIGUEZ-BARCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 102.

No. 02–7375. ROWE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 386.

No. 02–7376. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 339.

No. 02–7377. OLSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 945.

No. 02–7379. QUINTERO-BERNAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 626.

No. 02–7383. GARDNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 586.

No. 02–7384. FRANKLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 302 F. 3d 722.

No. 02–7386. ORTIZ-PARTIDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 239.

No. 02–7387. VASQUEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 644.

No. 02–7388. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 362.

No. 02–7389. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7394. LOHR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 296 F. 3d 680.

No. 02–7396. RILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 883.

No. 02–7397. RAYO-VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 314.

No. 02–7398. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–7399. JAVIER ARCINIEGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 492.

No. 02–7401. BROWN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 298 F. 3d 120.

No. 02–7407. STEELE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 298 F. 3d 906.

No. 02–7410. PRIETO-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 432.

No. 02–7411. WHITFIELD *v.* ANDERSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–7412. VALLEJO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1154.

No. 02–7413. WOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–7418. WAHAB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 991.

No. 02–7427. CLAIBORNE, AKA CROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 73.

No. 02–7429. FRANKLIN *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7430. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7431. HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7433. GOODE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 305 F. 3d 378.

No. 02–7435. MORENO-FUENTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 556.

No. 02–7440. FARMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 372.

No. 02–7443. HANDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 876.

No. 02–7448. SIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 614.

No. 02–7450. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 302 F. 3d 384.

No. 02–7451. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 339.

No. 02–7465. CHEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 289.

No. 02–7486. GALLO-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–400. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH ET AL. *v.* LYNCH, ADMINISTRATRIX OF THE ESTATE OF WILEY, ET AL. Sup. Ct. Ohio. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 95 Ohio St. 3d 441, 768 N. E. 2d 1158.

No. 02–562. AMERICAN GENERAL FINANCE, INC. *v.* PASCHEN ET UX. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 296 F. 3d 1203.

Rehearing Denied

No. 01–10009. IN RE STANFORD, *ante*, p. 968;

No. 01–10018. SORKPOR *v.* BANK OF BOSTON, *ante*, p. 832;

No. 01–10274. MCMILLIAN *v.* JONES, WARDEN, *ante*, p. 840;

No. 01–10399. SANCHEZ *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, *ante*, p. 843;

No. 01–10412. KINGSOLVER *v.* RAY ET AL., *ante*, p. 844;

No. 01–10501. SANTIAGO-LUGO *v.* UNITED STATES, *ante*, p. 847;

No. 01–10540. PETERSON *v.* ELLIS, WARDEN, *ante*, p. 848;

No. 01–10543. PALMER *v.* UNITED STATES HOUSE OF REPRESENTATIVES ET AL., *ante*, p. 848;

No. 01–10756. DAY *v.* VIRGINIA PAROLE BOARD ET AL., *ante*, p. 861;

No. 01–10796. DANIELS *v.* BOROUGH OF MEDIA, PENNSYLVANIA, ET AL., *ante*, p. 864;

No. 02–5215. MURPHY *v.* UNITED STATES, *ante*, p. 901;

No. 02–5313. ALDERMAN *v.* HEAD, WARDEN, *ante*, p. 995;

No. 02–5335. KURGAN *v.* UNITED STATES, *ante*, p. 909;

No. 02–5518. IN RE JOHNSON, *ante*, p. 811;

No. 02–5633. CRAVIN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 926;

No. 02–5755. SPENCER *v.* THOMAS, CHAIRMAN, RAILROAD RETIREMENT BOARD, *ante*, p. 930;

No. 02–5820. HOOGENBOOM *v.* UNITED STATES, *ante*, p. 932;

No. 02–5981. LANGFORD *v.* UNITED STATES, *ante*, p. 937;

No. 02–6031. KING *v.* FIRST AMERICAN INVESTIGATIONS, INC., ET AL., *ante*, p. 960;

No. 02–6125. MORA *v.* UNITED STATES, *ante*, p. 961;

No. 02–6318. OLANIYI-OKE *v.* UNITED STATES, *ante*, p. 982; and

No. 02–6321. HUDSON *v.* PICATINNY ARSENAL, DEPARTMENT OF THE ARMY, *ante*, p. 982. Petitions for rehearing denied.

JANUARY 7, 2003

Dismissal Under Rule 46

No. 02–832. TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., ET AL. *v.* WINARTO. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 274 F. 3d 1276.

Rehearing Denied

No. 02–6655. FOSTER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, *ante*, p. 1054. Petition for rehearing denied.

JANUARY 10, 2003

Certiorari Granted

No. 02–469. BLACK & DECKER DISABILITY PLAN *v.* NORD. C. A. 9th Cir. Certiorari granted. Reported below: 296 F. 3d 823.

No. 02–634. GREEN TREE FINANCIAL CORP., NKA CONSECO FINANCE CORP. *v.* BAZZLE ET AL., IN A REPRESENTATIVE CAPAC-

ITY ON BEHALF OF A CLASS AND FOR ALL OTHERS SIMILARLY SITUATED, ET AL. Sup. Ct. S. C. Certiorari granted. Reported below: 351 S. C. 244, 569 S. E. 2d 349.

No. 02–679. DESERT PALACE, INC., DBA CAESARS PALACE HOTEL & CASINO *v.* COSTA. C. A. 9th Cir. Certiorari granted. Reported below: 299 F. 3d 838.

No. 01–950. HILLSIDE DAIRY INC. ET AL. *v.* LYONS, SECRETARY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, ET AL.; and

No. 01–1018. PONDEROSA DAIRY ET AL. *v.* LYONS, SECRETARY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 259 F. 3d 1148.

No. 02–337. BREUER *v.* JIM'S CONCRETE OF BREVARD, INC. C. A. 11th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served on opposing counsel on or before 3 p.m., Friday, February 14, 2003. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 10, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 24, 2003. This Court's Rule 29.2 does not apply. Reported below: 292 F. 3d 1308.

No. 02–428. DASTAR CORP. *v.* TWENTIETH CENTURY FOX FILM CORP. 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., Friday, February 14, 2003. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 10, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 24, 2003. This Court's Rule 29.2 does not apply. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 34 Fed. Appx. 312.

No. 02–524. JONES, WARDEN *v.* VINCENT. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 292 F. 3d 506.

No. 02–575. NIKE, INC., ET AL. *v.* KASKY. Sup. Ct. Cal. Motions for leave to file briefs as *amici curiae* filed by the following

are granted: Pacific Legal Foundation et al.; Council of Public Relations Firms et al.; ExxonMobil et al.; Center for Advancement of Capitalism; Civil Justice Association of California; Thirty-Two Leading Newspapers, Magazines, Broadcasters, and Media-Related Professional Associations; Washington Legal Foundation; Chamber of Commerce of the United States; and Center for Individual Freedom. Certiorari granted. Reported below: 27 Cal. 4th 939, 45 P. 3d 243.

No. 02–722. AMERICAN INSURANCE ASSN. ET AL. *v.* LOW, INSURANCE COMMISSIONER, STATE OF CALIFORNIA. C. A. 9th Cir. Motion of Chamber of Commerce of the United States et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 296 F. 3d 832.

JANUARY 13, 2003

Affirmed on Appeal

No. 02–125. KING *v.* GEORGIA ET AL. Affirmed on appeal from D. C. D. C. Reported below: 195 F. Supp. 2d 25.

No. 02–425. KING *v.* GEORGIA ET AL. Affirmed on appeal from D. C. D. C. Reported below: 204 F. Supp. 2d 4.

No. 02–577. CANO ET AL. *v.* DAVIS, GOVERNOR OF CALIFORNIA, ET AL. Affirmed on appeal from D. C. C. D. Cal. Reported below: 211 F. Supp. 2d 1208.

No. 02–776. KING ET AL. *v.* GEORGIA. Affirmed on appeal from D. C. N. D. Ga.

Certiorari Granted—Vacated and Remanded

No. 02–377. IMMIGRATION AND NATURALIZATION SERVICE *v.* SILVA-JACINTO. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *INS* v. *Orlando Ventura*, *ante*, p. 12. Reported below: 37 Fed. Appx. 302.

Certiorari Dismissed

No. 02–7251. BANKS *v.* MCCONNELL ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk

is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 21 Fed. Appx. 757.

No. 02–7258. MAYBERRY *v.* STARR ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 44 Fed. Appx. 679.

No. 02–7262. LAWSON *v.* MISSISSIPPI. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 02M42. MOUSSAOUI *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 02M43. FRANKLIN *v.* UNITED STATES POSTAL SERVICE ET AL.;

No. 02M44. CARTER *v.* DAVIS ET AL.;

No. 02M45. PEREZ *v.* UNITED STATES; and

No. 02M46. JOHNSON *v.* HALL, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 129, Orig. VIRGINIA *v.* MARYLAND. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed within 45 days. Replies, if any, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, 536 U. S. 903.]

No. 01–1289. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. *v.* CAMPBELL ET AL. Sup. Ct. Utah. [Certiorari granted, 535 U. S. 1111.] Motion of respondents for leave to file a brief in response to petitioner's supplemental brief granted. Motion of petitioner for leave to file a second supplemental brief granted.

No. 02–102. LAWRENCE ET AL. *v.* TEXAS. Ct. App. Tex., 14th Dist. [Certiorari granted, *ante*, p. 1044.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 02–572. INTEL CORP. *v.* ADVANCED MICRO DEVICES, INC. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE O'CONNOR took no part in the consideration or decision of this order.

No. 02–626. SOUTH FLORIDA WATER MANAGEMENT DISTRICT *v.* MICCOSUKEE TRIBE OF INDIANS ET AL. C. A. 11th Cir.; and

No. 02–649. DEE-K ENTERPRISES, INC., ET AL. *v.* HEVEAFIL SDN. BHD. ET AL. C. A. 4th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 02–5664. SELL *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 999.] Motions of Drug Policy Alliance and American Psychological Association et al. for leave to file briefs as *amici curiae* granted.

No. 02–6416. BOWEN *v.* HUNT, GOVERNOR OF NORTH CAROLINA, ET AL. Ct. App. N. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1026] denied.

No. 02–6955. FAISON *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. C. A. 11th Cir.;

No. 02–7182. JOHNSON *v.* SMART & FINAL STORES CORP. Ct. App. Cal., 2d App. Dist.;

No. 02–7291. SIVILAY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir.;

No. 02–7517. EVANS *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir.; and

No. 02–7635. CAHN *v.* UNITED STATES ET AL. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 3, 2003, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 02–7627. IN RE BARTHMAIER;
No. 02–7629. IN RE BATES;
No. 02–7667. IN RE WELDON;
No. 02–7696. IN RE MURRAY;
No. 02–7707. IN RE NABORS ET AL.;
No. 02–7963. IN RE TOWARD;
No. 02–7981. IN RE VIVONE;
No. 02–7987. IN RE LEVERETTE;
No. 02–8052. IN RE UNDERWOOD; and
No. 02–8071. IN RE HAWKINS. Petitions for writs of habeas corpus denied.

No. 02–8014. IN RE JONES. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 02–7419. IN RE SIMON;
No. 02–7434. IN RE HAYES;
No. 02–7457. IN RE GIBBS;
No. 02–7686. IN RE ERDMAN;
No. 02–7828. IN RE BARNETT; and
No. 02–7962. IN RE WRIGHT. Petitions for writs of mandamus denied.

No. 02–7836. IN RE ARMENDARIZ-MATA. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 01–1878. HAWAII ET AL. *v.* VINSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 288 F. 3d 1145.

No. 01–10864. HITT *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 273 Kan. 224, 42 P. 3d 732.

No. 01–10886. NEAL *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 286 F. 3d 230.

No. 01–10912. MIRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–275. RESTREPO *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 02–319. PITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 321.

No. 02–320. KARAMANOS ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 727.

No. 02–324. COY *v.* PHELPS. C. A. 6th Cir. Certiorari denied. Reported below: 286 F. 3d 295.

No. 02–348. SEIBER ET VIR *v.* OREGON, BY AND THROUGH THE OREGON STATE BOARD OF FORESTRY. Ct. App. Ore. Certiorari denied. Reported below: 178 Ore. App. 319, 37 P. 3d 259.

No. 02–384. BLACKTHORNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–392. NOTTI ET AL. *v.* COOK INLET REGION, INC. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 586.

No. 02–402. OKLAHOMA DEPARTMENT OF CORRECTIONS *v.* STEWART. C. A. 10th Cir. Certiorari denied. Reported below: 292 F. 3d 1257.

No. 02–426. BALLARD ET AL. *v.* GARRETT ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 348 Ark. 567, 74 S. W. 3d 608.

No. 02–437. JACKSON *v.* CHUBB CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 45 Fed. Appx. 163.

No. 02–455. SCHMIDT *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–463. ALS SCAN, INC. *v.* DIGITAL SERVICE CONSULTANTS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 293 F. 3d 707.

No. 02–476. INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA ET AL. *v.* WATSON, ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 279 F. 3d 1036.

No. 02–484. VAN POYCK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 290 F. 3d 1318.

No. 02–504. BROCKTON HOSPITAL *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 294 F. 3d 100.

No. 02–530. GUSTAFSON ET AL. *v.* BRIDGESTONE/FIRESTONE, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 288 F. 3d 1012.

No. 02–534. UNITED STATES EX REL. CLAUSEN *v.* LABORATORY CORPORATION OF AMERICA, INC. C. A. 11th Cir. Certiorari denied. Reported below: 290 F. 3d 1301.

No. 02–540. CITY OF FERGUSON, MISSOURI *v.* INTERNATIONAL ASSOCIATION OF FIREFIGHTERS OF ST. LOUIS. C. A. 8th Cir. Certiorari denied. Reported below: 283 F. 3d 969.

No. 02–542. BALLARD ET AL. *v.* MARTIN ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 349 Ark. 564, 79 S. W. 3d 838.

No. 02–544. HODGES, GOVERNOR OF SOUTH CAROLINA *v.* ABRAHAM, SECRETARY OF ENERGY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 300 F. 3d 432.

No. 02–545. CHANDLER, DIRECTOR OF HUMAN SERVICES OF HAWAII, ET AL. *v.* LOVELL ET AL.; CHANDLER, DIRECTOR OF HUMAN SERVICES OF HAWAII, ET AL. *v.* HIRATA; and CHANDLER, DIRECTOR OF HUMAN SERVICES OF HAWAII, ET AL. *v.* HO. C. A. 9th Cir. Certiorari denied. Reported below: 303 F. 3d 1039 (first judgment); 45 Fed. Appx. 781 (second judgment) and 782 (third judgment).

No. 02–553. BRICKWOOD CONTRACTORS, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 288 F. 3d 1371.

No. 02–554. ORR ET AL. *v.* AMERICAN HERITAGE LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 294 F. 3d 702.

No. 02–557. PAPER, ALLIED-INDUSTRIAL, CHEMICAL & ENERGY WORKERS INTERNATIONAL UNION *v.* TNS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 296 F. 3d 384.

No. 02–560. WASHOE COUNTY, NEVADA, ET AL. *v.* GIBSON. C. A. 9th Cir. Certiorari denied. Reported below: 290 F. 3d 1175.

No. 02–566. HARLEY ET AL. *v.* 3M CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 284 F. 3d 901.

No. 02–569. LUBETSKY *v.* APPLIED CARD SYSTEMS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1301.

No. 02–578. JACKSON ET AL. *v.* BENSON ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 249 Wis. 2d 681, 639 N. W. 2d 545.

No. 02–580. CRISLER ET AL. *v.* BROWNE ET AL. Sup. Ct. La. Certiorari denied. Reported below: 821 So. 2d 483.

No. 02–588. BEAZLEY, BY AND THROUGH HER GUARDIAN AD LITEM, BEAZLEY *v.* SUPERIOR COURT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 334.

No. 02–589. PIERSON *v.* CHARLES E. SMITH CO. Cir. Ct. Arlington County, Va. Certiorari denied.

No. 02–594. ROLLESTON *v.* SANDEASE, LTD., ET AL. Ct. App. Ga. Certiorari denied. Reported below: 253 Ga. App. XXV.

No. 02–605. HUTSON *v.* RENT-A-CENTER, INC. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 980.

No. 02–607. BELL *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–608. BEARD, WARDEN, ET AL. *v.* EVERETT. C. A. 3d Cir. Certiorari denied. Reported below: 290 F. 3d 500.

No. 02–609. RINGSRED *v.* CITY OF DULUTH, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 480.

No. 02–613. PALOTAI *v.* UNIVERSITY OF MARYLAND AT COLLEGE PARK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 946.

No. 02–614. SLAUGHTER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 815 So. 2d 1122.

No. 02–620. BURKE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 108 Wash. App. 1048.

No. 02–622. RAMOS *v.* COBB, JUSTICE, SUPREME COURT OF NEW YORK, THIRD JUDICIAL DISTRICT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–624. AGUILERA ET UX. *v.* DANIELS/NICHOLSON INSURANCE AGENCY ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–625. DISABLED RIGHTS ACTION COMMITTEE *v.* FREMONT STREET EXPERIENCE LIMITED LIABILITY CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 100.

No. 02–629. ARNOVICK ET AL. *v.* UTAH STATE BAR. Sup. Ct. Utah. Certiorari denied. Reported below: 52 P. 3d 1246.

No. 02–630. BARR *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 978.

No. 02–632. LOGIODICE *v.* TRUSTEES OF MAINE CENTRAL INSTITUTE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 296 F. 3d 22.

No. 02–637. POSTMA *v.* CITY OF ORANGE CITY, IOWA (two judgments). Ct. App. Iowa. Certiorari denied.

No. 02–640. ANDE ET AL. *v.* FOST ET AL. Ct. App. Wis. Certiorari denied. Reported below: 256 Wis. 2d 365, 647 N. W. 2d 265.

No. 02–641. ESTATE OF SORRELLS, BY AND THROUGH ITS INDEPENDENT EXECUTRIX, THOSTENSON, ET AL. *v.* CITY OF

DALLAS, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 325.

No. 02–642. STARR *v.* CITY OF HATTIESBURG, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–644. HOFFMAN ET AL. *v.* JEFFORDS. C. A. D. C. Cir. Certiorari denied.

No. 02–645. BOOTH ET AL. *v.* HVASS, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 302 F. 3d 849.

No. 02–650. EVANS *v.* DERIDDER MUNICIPAL FIRE & POLICE CIVIL SERVICE BOARD. Sup. Ct. La. Certiorari denied. Reported below: 815 So. 2d 61.

No. 02–654. KAZYAK *v.* WINSTEAD. Sup. Ct. Va. Certiorari denied.

No. 02–656. FRANKLIN ET VIR *v.* CHAPMAN. C. A. 11th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 942.

No. 02–657. SCOTT ET AL. *v.* HANSEN ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 645 N. W. 2d 223.

No. 02–660. CLIFFS SYNFUEL CORP. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 291 F. 3d 1250.

No. 02–664. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–665. VEGLIANTE *v.* NEW JERSEY DEPARTMENT OF TREASURY, DIVISION OF TAXATION. C. A. 3d Cir. Certiorari denied. Reported below: 41 Fed. Appx. 595.

No. 02–668. WE CARE TRADING CO., INC. *v.* COACH, INC. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 626.

No. 02–669. PATEL ET AL. *v.* PERMIAN CARDIOLOGY GROUP ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 333.

No. 02–671. JENKINS *v.* JACKSON ET UX. Int. Ct. App. Haw. Certiorari denied. Reported below: 98 Haw. 512, 51 P. 3d 379.

No. 02–673. BARBER *v.* COX, SECRETARY OF STATE OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 275 Ga. 415, 568 S. E. 2d 478.

No. 02–676. ADAIR *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 559.

No. 02–677. PALUMBO *v.* WEILL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 37 Fed. Appx. 571.

No. 02–681. ARCADE TEXTILES, INC., ET AL. *v.* SECURITY INSURANCE COMPANY OF HARTFORD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 767.

No. 02–684. WATKINS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 253 Ga. App. 382, 559 S. E. 2d 133.

No. 02–685. BROWN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 623.

No. 02–689. SCHEIBER *v.* DOLBY LABORATORIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 293 F. 3d 1014.

No. 02–690. NYEHOLT *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 298 F. 3d 1350.

No. 02–691. PICKELMAN ET AL. *v.* MICHIGAN STATE POLICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 298.

No. 02–694. JOHNSON ET VIR *v.* EMERALD GREENS PROPERTY OWNERS ASSOCIATION BOARD OF DIRECTORS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 437.

No. 02–696. LIMBOCKER *v.* SMITH, SHERIFF, SANTA CLARA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–698. PACE *v.* GAINES, JUDGE, SUPERIOR COURT OF ARIZONA, COUNTY OF MARICOPA, ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–699. TIDYMAN'S, INC. *v.* HEMMINGS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 285 F. 3d 1174.

No. 02–702. VAZIN *v.* TENNESSEE STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 563.

No. 02–703. BEVAN *v.* NBC NEWS BUREAUS, INC., ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 816 So. 2d 638.

No. 02–706. DALMER *v.* LAMOILLE FAMILY CENTER ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 174 Vt. 157, 811 A. 2d 1214.

No. 02–717. MACPHAIL *v.* OCEANEERING INTERNATIONAL, INC. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 274.

No. 02–721. CHANDLER *v.* SOUTH CAROLINA FARM BUREAU INSURANCE COS. Sup. Ct. S. C. Certiorari denied.

No. 02–723. SHERFEY ET UX. *v.* SHERFEY ET UX. Ct. App. Ky. Certiorari denied. Reported below: 74 S. W. 3d 777.

No. 02–725. PULICE *v.* ENCISCO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 692.

No. 02–726. NAVARRO PINEDA ET AL. *v.* CITY OF HOUSTON, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 291 F. 3d 325.

No. 02–727. TY INC. *v.* PUBLICATIONS INTERNATIONAL, LTD. C. A. 7th Cir. Certiorari denied. Reported below: 292 F. 3d 512.

No. 02–729. MORLEY *v.* JAMES J. GORY MECHANICAL CONTRACTING, INC. Sup. Ct. Pa. Certiorari denied.

No. 02–731. PACE *v.* GAINES, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–732. FLEMING ET AL. *v.* JEFFERSON COUNTY SCHOOL DISTRICT R–1. C. A. 10th Cir. Certiorari denied. Reported below: 298 F. 3d 918.

No. 02–735. BEVAN *v.* NBC NEWS BUREAUS, INC., ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 816 So. 2d 638.

No. 02–742. MEDICAL AIR TECHNOLOGY CORP. *v.* MARWAN INVESTMENT, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 303 F. 3d 11.

No. 02–743. MCMAHON *v.* ALBANY UNIFIED SCHOOL DISTRICT ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–748. JOHNSON *v.* ADOPTION CENTER OF CHOICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 293 F. 3d 1196.

No. 02–752. WESTAFF (USA) INC., AS ADMINISTRATOR OF THE WESTERN STAFF SERVICES EMPLOYEE HEATH PLAN, DBA WESTERN STAFF SERVICES *v.* ARCE. C. A. 9th Cir. Certiorari denied. Reported below: 298 F. 3d 1164.

No. 02–753. WORLD CHURCH OF THE CREATOR *v.* TE-TA-MA TRUTH FOUNDATION-FAMILY OF URI, INC. C. A. 7th Cir. Certiorari denied. Reported below: 297 F. 3d 662.

No. 02–755. CITY OF GARLAND, TEXAS *v.* LARSON. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 225.

No. 02–760. ARMADA OIL & GAS CO. ET AL. *v.* PDV MIDWEST REFINING, L. L. C., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 305 F. 3d 498.

No. 02–761. ALVAREZ-PORTILLO *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–762. BANKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 29 Fed. Appx. 276.

No. 02–767. FAIRFAX NURSING HOME, INC. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 300 F. 3d 835.

No. 02–769. BOWLER *v.* POTTER, POSTMASTER GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 608.

No. 02–775. KEANE, SUPERINTENDENT, WOODBURNE CORRECTIONAL FACILITY *v.* ERAZO. C. A. 2d Cir. Certiorari denied. Reported below: 42 Fed. Appx. 527.

No. 02–778. OLIVER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 57 M. J. 170.

No. 02–779. CONTI ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 291 F. 3d 1334.

No. 02–780. OSORIO-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 320.

No. 02–781. WILLENBRING *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 57 M. J. 321.

No. 02–785. MYERS *v.* HALLIBURTON CO. ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 80 S. W. 3d 566.

No. 02–788. ROBINSON *v.* BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 805.

No. 02–790. ALDER ET AL. *v.* TENNESSEE VALLEY AUTHORITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 952.

No. 02–791. BRUNETTE *v.* OJAI PUBLISHING CO., INC., DBA THE OJAI VALLEY NEWS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 294 F. 3d 1205.

No. 02–794. HICKEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 302 F. 3d 37.

No. 02–795. FROST *v.* HARPER ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–796. GOLIGHTLY ET AL. *v.* MONTOYA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 301 F. 3d 985.

No. 02–799. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 843.

No. 02–808. MARRA *v.* LEFTRIDGE BYRD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CHESTER, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 83.

No. 02–812. FISHER *v.* UNITED STATES; and

No. 02–7503. SUTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 1329.

No. 02–814. AGUSTIN *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 895.

No. 02–824. ST. HILAIRE *v.* NEW HAMPSHIRE REAL ESTATE COMMISSION. Sup. Ct. N. H. Certiorari denied.

No. 02–835. KRANTZ *v.* PRUDENTIAL INVESTMENTS FUND MANAGEMENT LLC ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 305 F. 3d 140.

No. 02–866. SOUDAVAR *v.* FEDERAL AVIATION ADMINISTRATION. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 323.

No. 02–867. SOUDAVAR *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 731.

No. 02–877. YEAGER *v.* OHIO CIVIL RIGHTS COMMISSION. Ct. App. Ohio, Trumbull County. Certiorari denied. Reported below: 148 Ohio App. 3d 459, 773 N. E. 2d 1097.

No. 02–883. SHAWVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 428.

No. 02–884. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 959.

No. 02–907. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 677.

No. 02–908. BERGHOUDIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 205.

No. 02–913. PORCELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 303 F. 3d 452.

No. 02–6039. TONEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–6114. CHARLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 758.

No. 02–6135. SOLANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 831.

No. 02–6163. GORDON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 291 F. 3d 181.

No. 02–6170. FISCHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 285 F. 3d 596.

No. 02–6368. RHIND ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 690.

No. 02–6448. GUTIERREZ-FARIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 F. 3d 657.

No. 02–6450. HILLHOUSE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 469, 40 P. 3d 754.

No. 02–6462. MANUEL *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 825 So. 2d 386.

No. 02–6480. HARGIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 656.

No. 02–6522. LOPEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–6545. RAMIREZ-CHILEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 744.

No. 02–6565. HARTMAN *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 283 F. 3d 190.

No. 02–6624. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 745.

No. 02–6642. GULLY *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6652. LAXTON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 254 Wis. 2d 185, 647 N. W. 2d 784.

No. 02–6693. SMALLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 294 F. 3d 1030.

No. 02–6746. WOODRUFF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1041.

No. 02–6750. BAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 652.

No. 02–6764. HEMEDA *v.* SBARRO, INC., ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 289 App. Div. 2d 784, 734 N. Y. S. 2d 513.

No. 02–6876. STEVENS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 78 S. W. 3d 817.

No. 02–6879. GRAY *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 281 F. 3d 749.

No. 02–6900. GRIGSBY *v.* GUYTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 934.

No. 02–6903. CROWE *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–6913. BOULWARE *v.* LAUGHRUN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 685.

No. 02–6917. PADILLA *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 818 So. 2d 522.

No. 02–6919. NEGRETE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6923. STEELE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 1230, 47 P. 3d 225.

No. 02–6927. THOMPSON *v.* GALETKA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 397.

No. 02–6931. RICHARDSON *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 573.

No. 02–6932. RUCKER *v.* FORD ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6933. SISTRUNK *v.* ARMENAKIS, ASSISTANT DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 669.

No. 02–6937. BUTLER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 02–6938. SHELTON *v.* DOS SANTOS ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–6939. SEEBOTH *v.* HUNTER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–6940. MILLER *v.* BELGADO ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–6944. GAINES *v.* HUSKEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–6951. WILLIAMS *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–6957. FINCH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–6960. GOLDWATER *v.* ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–6961. GOLDWATER *v.* BOARD OF CHIROPRACTIC EXAMINERS ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–6963. KELCH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6964. OCHOA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 90.

No. 02–6969. LOOKINGBILL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 256.

No. 02–6971. RAMIREZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–6973. SCOTT *v.* GONZALEZ, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–6974. SCOTT *v.* CURRY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–6976. COHEN *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 290 F. 3d 485.

No. 02–6978. REYNOLDS *v.* WACKENHUT CORRECTION CORP. ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–6984. HAWKINS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 02–6988. DOPP *v.* LABETTE COUNTY, KANSAS, ET AL. Ct. App. Kan. Certiorari denied. Reported below: 30 Kan. App. 2d —, 45 P. 3d 403.

No. 02–6989. PALMER *v.* U S WEST COMMUNICATIONS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 644.

No. 02–6990. KOONTZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 1041, 46 P. 3d 335.

No. 02–6993. DRAGO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 825 So. 2d 379.

No. 02–6997. RUELAS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7000. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7010. HUDSON *v.* LOUISIANA DIVISION OF PROBATION AND PAROLE ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7015. DEMPERE *v.* CITY OF TUKWILA, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 531.

No. 02–7017. WILEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 592, 565 S. E. 2d 22.

No. 02–7022. GANDARELA *v.* JOHNSON, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 286 F. 3d 1080.

No. 02–7026. WILSON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 768 N. E. 2d 1050.

No. 02–7029. KUBILIS *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7032. GARDNER *v.* GARDNER (two judgments). Ct. Sp. App. Md. Certiorari denied.

No. 02–7035. PETERSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 508.

No. 02–7038. NABELEK *v.* COLLINS, JUDGE, DISTRICT COURT OF TEXAS, HARRIS COUNTY. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7043. STREETY *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7045. PRUETT *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7046. JOHNSON *v.* HINES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 434.

No. 02–7050. WAMBACH *v.* NORTH CAROLINA DEPARTMENT OF REVENUE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 558.

No. 02–7053. TYNER *v.* RAY, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 499.

No. 02–7054. ZAPATA *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7055. SANCHEZ *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 02–7061. BROWN *v.* UNKNOWN CARDIOLOGIST ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–7063. TROPF ET UX. *v.* FIDELITY NATIONAL TITLE INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 289 F. 3d 929.

No. 02–7064. COLLINS *v.* JOHNSON, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 588.

No. 02–7067. HORTON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7068. DATRICE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–7070. ASHLEY *v.* TONEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–7073. BRAZILE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–7075. CUNNINGHAM *v.* O'LEARY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 232.

No. 02–7076. CHANSUOLME *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 228.

No. 02–7079. BELL *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 02–7080. PAGE *v.* DEMORALES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 930.

No. 02–7081. HAMLIN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 02–7082. MIMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7083. ELLIOTT *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–7087. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 02–7092. TAYLOR *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 284 F. 3d 1143.

No. 02–7094. COX *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 819 So. 2d 705.

No. 02–7095. FARRELL *v.* GRIEVANCE COMMITTEE FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 50.

No. 02–7096. CAMP *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–7097. BLANDINO *v.* DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7100. MAHAFFEY *v.* SCHOMIG, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 294 F. 3d 907.

No. 02–7101. FULLWOOD *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 290 F. 3d 663.

No. 02–7105. MASTRIANO *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7111. STRONG *v.* EDWARDS, SUPERINTENDENT, OTISVILLE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7112. ESTRADA GONZALES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7121. HOWARD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7124. UZENDA GOBBI *v.* SHAFTESBURY GLEN GOLF & FISH CLUB, LLC, ET AL. C. A. 4th Cir. Certiorari denied.

No. 02–7128. HONG *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 02–7129. MCKNIGHT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–7130. CORNELIUS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–7135. AGNEW *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 96.

No. 02–7140. CRUZ *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 792.

No. 02–7141. FRANKLIN *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7142. PINET *v.* BLAINE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7144. PETERSON *v.* PIEDMONT TECHNICAL COLLEGE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 589.

No. 02–7151. SLAUGHTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 4th 1187, 47 P. 3d 262.

No. 02–7154. THOMAS *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 889.

No. 02–7155. ARMSTRONG *v.* IOWA. Ct. App. Iowa. Certiorari denied.

No. 02–7159. LARSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–7164. PEARSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 356 N. C. 22, 566 S. E. 2d 50.

No. 02–7168. JOHNSON *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7169. KRAUSE *v.* WADDINGTON, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 02–7170. LLOYD *v.* VANNATTA, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 296 F. 3d 630.

No. 02–7187. VALLE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7188. THOMAS *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 302.

No. 02–7190. MOORE *v.* BRESLIN, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7193. HINKLE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7194. ELDRIDGE *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7195. COURTEMANCHE *v.* MESTER, JUDGE, CIRCUIT COURT OF MICHIGAN, SIXTH CIRCUIT. Ct. App. Mich. Certiorari denied.

No. 02–7196. DAVIDSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 763 N. E. 2d 441.

No. 02–7197. CARTER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7201. SEPULVEDA *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7206. GASCA *v.* GASCA. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 02–7207. GASCA *v.* GASCA. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 02–7209. BROWN *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7210. PARR *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7211. OUTLAW *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7213. MORRISON *v.* FIRST NATIONAL BANK (ZANESVILLE). Ct. App. Ohio, Franklin County. Certiorari denied.

No. 02–7214. KING *v.* BARNES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 866.

No. 02–7215. WHIGHAM *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 111.

No. 02–7216. PRIDGEN *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 54 Mass. App. 1110, 765 N. E. 2d 827.

No. 02–7218. KIM *v.* MAXEY TRAINING SCHOOL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 207.

No. 02–7220. GRAHAM *v.* MAZZUCA, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7222. ELKINS *v.* SCHNEIDER, FKA ELZ. Ct. App. Wis. Certiorari denied. Reported below: 256 Wis. 2d 693, 647 N. W. 2d 467.

No. 02–7226. FEDOROWICZ *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 52 P. 3d 1194.

No. 02–7227. WILLIAMSON *v.* CITY OF CORPUS CHRISTI, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7229. WILSON *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–7230. BELL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 264 Va. 172, 563 S. E. 2d 695.

No. 02–7231. GATHINGS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 822 So. 2d 266.

No. 02–7233. POFAHL *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied.

No. 02–7236. DREW *v.* TESSMER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 561.

No. 02–7238. CARRAFA *v.* MIDDLETON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 182.

No. 02–7239. SANCHEZ *v.* WHITE, SECRETARY, DEPARTMENT OF THE ARMY. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 844.

No. 02–7240. HOWELL *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 765.

No. 02–7241. JACKSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 967.

No. 02–7243. SHELTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–7245. FARNAM *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 28 Cal. 4th 107, 47 P. 3d 988.

No. 02–7246. SIRHAN *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7248. FAISON *v.* CROSBY ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 823 So. 2d 767.

No. 02–7249. SEITZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7250. LAMBERT *v.* LOUISIANA. Dist. Ct. La., Lafayette Parish. Certiorari denied.

No. 02–7252. WILCOX *v.* IRON OUT, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–7255. LEE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–7260. MOON *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 285 F. 3d 1301.

No. 02–7268. SIMPSON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 02–7273. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 38 Fed. Appx. 109.

No. 02–7275. PACE *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 02–7277. McGee *v.* Moore, Superintendent, Monroe Correctional Complex. C. A. 9th Cir. Certiorari denied.

No. 02–7278. Lace *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 256 Wis. 2d 1046, 650 N. W. 2d 321.

No. 02–7279. LeBar *v.* Waddington, Superintendent, Stafford Creek Corrections Center. C. A. 9th Cir. Certiorari denied.

No. 02–7283. Williams *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 501, 565 S. E. 2d 609.

No. 02–7286. Hernandez *v.* Wiley, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 343.

No. 02–7292. Box *v.* Kemna, Superintendent, Crossroads Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 02–7293. Brown *v.* Lakeside Dental Care. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 325.

No. 02–7294. Peek *v.* Moore, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 991.

No. 02–7295. Burgess *v.* Carmichael et al. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 288.

No. 02–7296. Tedesco *v.* Berthiame et al. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 57.

No. 02–7297. Thirkield *v.* Pitcher, Warden. C. A. 6th Cir. Certiorari denied.

No. 02–7298. Washington *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 02–7299. Murphy *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 798 So. 2d 609.

No. 02–7300. Salazar *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 816 So. 2d 635.

No. 02–7302. Sartori *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 58.

No. 02–7303. SKLAR *v.* NEW YORK LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 34 Fed. Appx. 403.

No. 02–7304. MYRON *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 971.

No. 02–7306. TURPIN *v.* MUELLER. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 151.

No. 02–7307. FULTZ *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 02–7308. BROOKS *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7310. HUGHES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7311. GREEN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–7319. LEIKETT *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 944.

No. 02–7321. STOTTS *v.* LUNA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 523.

No. 02–7322. RUSSELL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7323. SAPEU *v.* GAITHER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7325. HOLMES *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7327. BANKS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 43 P. 3d 390.

No. 02–7330. GUYDON *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7335. BUCHANAN *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 945.

No. 02–7337. THARPE *v.* HEAD, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 02–7338. WALKER *v.* GRAVES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–7340. TALLEY *v.* WEBB ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 313.

No. 02–7341. WILLIAMS *v.* KARR ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 50 P. 3d 910.

No. 02–7344. STORM *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 28 Cal. 4th 1007, 52 P. 3d 52.

No. 02–7345. MARTIN *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 40.

No. 02–7347. KAHN *v.* POPEYES OF MARYLAND, INC. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 946.

No. 02–7353. STERLING *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7354. SCOTT *v.* THOMPSON, WARDEN. Super. Ct. Mitchell County, Ga. Certiorari denied.

No. 02–7355. ROBINSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–7358. JOHNSON *v.* CHERIAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7360. DAVIS *v.* SCHUETZLE, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 904.

No. 02–7361. COBBLE *v.* KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 320.

No. 02–7367. TRICE *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7369. PORTALATIN *v.* CITY OF ALTAMONTE SPRINGS, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 621.

No. 02–7378. DUNG HUNG NGUYEN *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7382. MURPHY *v.* MISSOURI BOARD OF PROBATION AND PAROLE ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–7390. ROBINSON, AKA BEN YOWEL *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 939.

No. 02–7392. JORDAN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7393. LYNCH-BEY *v.* BOLDEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 696.

No. 02–7395. LACY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 821 So. 2d 850.

No. 02–7400. PROFFITT *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 918.

No. 02–7405. CARTER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–7406. WILLEMS *v.* PIMA COUNTY, ARIZONA, BY AND THROUGH ITS BOARD OF SUPERVISORS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7408. STRAYER-SZERLIP *v.* SZERLIP. Ct. App. Ohio, Knox County. Certiorari denied.

No. 02–7414. WELCH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7415. WILLIAMS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 02–7416. WILSON *v.* WESLEY MEDICAL CENTER. C. A. 10th Cir. Certiorari denied.

No. 02–7417. WINFIELD *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7421. LEGRANDE *v.* NORTH CAROLINA ET AL. Sup. Ct. N. C. Certiorari denied. Reported below: 356 N. C. 164, 568 S. E. 2d 196.

No. 02–7423. BELTON *v.* HENSON, SHERIFF, ANGELINA COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7424. WHITE *v.* SALT LAKE COUNTY, UTAH, ET AL. C. A. 10th Cir. Certiorari denied.

No. 02–7425. MCDOWELL *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 02–7426. MCGHEE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–7428. EVANS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 02–7432. STEPHENS *v.* HALL, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 294 F. 3d 210.

No. 02–7437. HILL *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7454. LOCKHART *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7460. ANDERSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 02–7463. LOPEZ-CHAPARRO, AKA MUNOZ-ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–7466. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 512.

No. 02–7468. BELLENGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 102.

No. 02–7469. MONTALVO-DOMINGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 791.

No. 02–7470. LAMB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 184.

No. 02–7471. JOHNSON, AKA MATHEWS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–7472. KHMYZNIKOV *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–7474. PEETE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 299 F. 3d 632.

No. 02–7475. MIGGINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 302 F. 3d 384.

No. 02–7478. CAMPBELL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–7479. CORNEJO-JAIMES *v.* UNITED STATES; and ORBE-ELORZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104 (first judgment) and 106 (second judgment).

No. 02–7480. CAMACHO *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 452.

No. 02–7484. MILTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7485. MONTAGUEO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 899.

No. 02–7487. AVILES-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 102.

No. 02–7490. BETANCOURT-BETANCOURT, AKA BENTACOURT-BENTACOUR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 483.

No. 02–7491. PALMER *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–7493. VISAGE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 855.

No. 02–7494. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 696.

No. 02–7497. CORNEJO-CANALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 107.

No. 02–7498. TURK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7500. QUEZADA-LEON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 794.

No. 02–7501. SAVAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7504. RAMIREZ-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106.

No. 02–7505. PAIGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 658.

No. 02–7506. SPEER *v.* UNITED STATES; RICHARDSON *v.* UNITED STATES; and BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105 (first and second judgments) and 480 (third judgment).

No. 02–7507. GONZABA SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 102.

No. 02–7509. SCHONEBOOM *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 504.

No. 02–7511. PRICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7512. POLEDORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7513. DURAN *v.* UNITED STATES; BARRIENTOS-VASQUEZ *v.* UNITED STATES; and ROQUE CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105 (first and third judgments) and 106 (second judgment).

No. 02–7515. DESCENT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 292 F. 3d 703.

No. 02–7518. LICEA-LUCERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 265.

No. 02–7519. ROMERO LIERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 298 F. 3d 1175.

No. 02–7525. GUMERSINDO VALADEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7526. VILLELA-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 402.

No. 02–7531. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7532. MEJIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 929.

No. 02–7533. DAVIDSON *v.* CITY OF MONTGOMERY, ALABAMA. Ct. Civ. App. Ala. Certiorari denied. Reported below: 863 So. 2d 1162.

No. 02–7534. SANCHEZ *v.* MOORE, ADMINISTRATOR, EAST JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 02–7535. MILLER *v.* SNYDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 205.

No. 02–7536. WELCH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 807 A. 2d 596.

No. 02–7537. WARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 304 F. 3d 1320.

No. 02–7540. PATTERSON *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 37 Fed. Appx. 525.

No. 02–7541. ROSALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–7543. STALLINGS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7546. MARKHAM *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7550. CHAMPAGNE *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 137 Idaho 677, 52 P. 3d 321.

No. 02–7552. CONWAY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 779 A. 2d 1215.

No. 02–7553. DENNIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7554. DEWITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7557. HYATT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 642, 566 S. E. 2d 61.

No. 02–7558. FAULKNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7559. FENDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 800.

No. 02–7561. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 826.

No. 02–7562. GONZALEZ-HERNANDEZ *v.* UNITED STATES; and CENOVIO RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104 (first judgment) and 106 (second judgment).

No. 02–7568. VINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–7572. STRUBEL ET VIR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 918.

No. 02–7573. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 850.

No. 02–7574. ELLENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 746.

No. 02–7578. ESCOBAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 22 Fed. Appx. 50.

No. 02–7582. KNIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 669.

No. 02–7583. LYNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 624.

No. 02–7584. THOMPSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 286 F. 3d 950.

No. 02–7585. VILLAPANDO-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7586. SALAZAR VELASQUEZ *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 02–7589. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 392.

No. 02–7591. GARCIA-MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106.

No. 02–7592. HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 299 F. 3d 984.

No. 02–7593. HARRISON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 296 F. 3d 994.

No. 02–7595. SOLANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 207.

No. 02–7599. FULTON *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 564.

No. 02–7600. FORREST *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7601. FOREMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 215.

No. 02–7603. HOUSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7604. MOLINA ARGUETA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7606. DURAN-PISARO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7608. CAULFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7609. DAVIS *v.* DEES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7610. CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 865.

No. 02–7613. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7615. CASTILLO REZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106.

No. 02–7616. GARCIA ROBLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 107.

No. 02–7618. JASSO-ELIZONDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7622. GOMEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–7623. GONZALEZ-AVILA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106.

No. 02–7624. GONZALEZ, AKA JORGE DE HOYOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7628. LOPEZ-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 313 F. 3d 225.

No. 02–7630. BURGOS-CHAPARRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 309 F. 3d 50.

No. 02–7632. PEZZUTI *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 70 Conn. App. 840, 800 A. 2d 644.

No. 02–7633. CAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7634. CARRINGTON ET AL. *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 98 Cal. App. 4th 492, 120 Cal. Rptr. 2d 197.

No. 02–7640. MARCUM *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 301 F. 3d 480.

No. 02–7641. KAPLAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 41 Fed. Appx. 493.

No. 02–7642. MATOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 1354.

No. 02–7643. LANGSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 243.

No. 02–7644. MAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 681.

No. 02–7645. MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 860.

No. 02–7647. LALO-MENDOZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 302 F. 3d 679.

No. 02–7648. BOND *v.* UNITED STATES ATTORNEY GENERAL'S OFFICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 521.

No. 02–7649. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7651. ALFONSO RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 105.

No. 02–7652. RIOS-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 616.

No. 02–7653. STRICKLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 107.

No. 02–7655. POMPA, AKA CARDENAS, AKA MORENO, AKA JAIMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 107.

No. 02–7656. MIRANDA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 107.

No. 02–7658. KINGEEKUK *v.* SAMBERG. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 697.

No. 02–7660. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 339.

No. 02–7661. QUIROZ-MADRIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 260.

No. 02–7662. QUINTANILLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 302 F. 3d 679.

No. 02–7663. VASQUEZ-ORTEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 978.

No. 02–7664. TITLBACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 300 F. 3d 919.

No. 02–7668. HERNANDEZ-LOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 99.

No. 02–7670. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 917.

No. 02–7671. GREEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 239.

No. 02–7672. HAYS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–7673. HUGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 650.

No. 02–7674. HOLLIMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 291 F. 3d 498.

No. 02–7675. HORNE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 360.

No. 02–7679. LEWIS *v.* RANDLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 817.

No. 02–7681. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 879.

No. 02–7684. ALCARAS-NAVARRO *v.* UNITED STATES; and
No. 02–7705. GOMEZ-HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 300 F. 3d 974.

No. 02–7687. CARR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 303 F. 3d 539.

No. 02–7688. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–7689. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 443.

No. 02–7690. WILKINS *v.* HOOKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7692. ELIZONDO ALVAREZ *v.* PURDY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–7694. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 304 F. 3d 1061.

No. 02–7695. MCLEOD *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7697. BENFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 306 F. 3d 295.

No. 02–7698. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 305.

No. 02–7701. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 549.

No. 02–7702. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7703. BENTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 802 A. 2d 389.

No. 02–7708. KEATON *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 02–7709. ALARCON *v.* UNITED STATES (Reported below: 48 Fed. Appx. 107); ANDAVAZO-SANTANA *v.* UNITED STATES (48

Fed. Appx. 107); Balam-Un *v.* United States (48 Fed. Appx. 107); Colan-Espinoza *v.* United States (48 Fed. Appx. 107); Delgadillo-Frayre *v.* United States (48 Fed. Appx. 107); Gallardo-Morente *v.* United States (48 Fed. Appx. 106); Herrera-Ochoa *v.* United States (48 Fed. Appx. 106); Martinez *v.* United States (48 Fed. Appx. 107); Meza-Gamboa *v.* United States (48 Fed. Appx. 107); and Salazar-De Licon *v.* United States (48 Fed. Appx. 106). C. A. 5th Cir. Certiorari denied.

No. 02–7710. Bromwell *v.* Dormire, Superintendent, Jefferson City Correctional Center. Sup. Ct. Mo. Certiorari denied.

No. 02–7711. Sanchez-Milam *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 305 F. 3d 310.

No. 02–7713. Willard *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 551.

No. 02–7715. Leverton *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 480.

No. 02–7718. Hernandez-Gonzalez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7721. Munoz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7723. Guillermo Restrepo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 620.

No. 02–7724. Sims *v.* Conroy, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 670.

No. 02–7725. Solano *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 207.

No. 02–7731. Alejandro Carmona *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1154.

No. 02–7732. Chaney *v.* United States Postal Service. C. A. 7th Cir. Certiorari denied.

No. 02–7733. DURANGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7734. CRUMEDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 480.

No. 02–7735. DANIELS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 298.

No. 02–7736. ELDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 309 F. 3d 519.

No. 02–7739. BOOKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 269 F. 3d 930.

No. 02–7741. LIUFAU *v.* UNITED STATES; and
No. 02–7793. HAFOKA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 461.

No. 02–7742. LEIVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 267.

No. 02–7743. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 302 F. 3d 139.

No. 02–7744. LANZOTTI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 873.

No. 02–7746. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 807.

No. 02–7747. MI RYEONG KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 99.

No. 02–7750. BOSTIC *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–7751. MERRIWEATHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7753. TORRES-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 480.

No. 02–7754. ZAPATA-VICENTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 721.

No. 02–7756. COLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7758. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 741.

No. 02–7760. LOPEZ HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 686.

No. 02–7761. HERNANDEZ-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 702.

No. 02–7762. GUERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 293 F. 3d 1279.

No. 02–7764. MELITA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–7766. QUINONES MEDINA, AKA QUINONEZ, AKA REYES QUINONEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 160.

No. 02–7768. LOCKRIDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 741.

No. 02–7770. JIMENEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–7771. TOTARO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 321.

No. 02–7772. LEVAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–7773. KOLM *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 02–7775. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 382.

No. 02–7778. STREATER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 291 F. 3d 201.

No. 02–7780. RAZAK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7781. MARINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7784. SEALS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 742.

No. 02–7785. STEVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 303 F. 3d 711.

No. 02–7786. SALLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 752.

No. 02–7787. SANTINI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 739.

No. 02–7789. PEREZ, AKA ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 884.

No. 02–7790. MITCHELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 02–7791. MIRANDA ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 301 F. 3d 877.

No. 02–7794. GRAHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 305 F. 3d 1094.

No. 02–7795. INYAVONG *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–7796. HENDERSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 615.

No. 02–7798. HERRING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 87.

No. 02–7800. FIELDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 738.

No. 02–7801. WALDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–7802. WASHINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 862.

No. 02–7803. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 362.

No. 02–7804. VELA-IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–7805. CAJERO VERONICA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 280.

No. 02–7811. BOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7816. CHAVEZ AGUILERA, AKA PEDROZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 594 and 33 Fed. Appx. 297.

No. 02–7819. HICKOX *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7821. BAKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 761.

No. 02–7826. MARTIN *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 02–7830. DORITY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 301.

No. 02–7831. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 130.

No. 02–7833. APANOVITCH ET AL. *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 704.

No. 02–7835. WALKER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 02–7843. CASHAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 297 F. 3d 760.

No. 02–7844. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7850. RICHARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 291.

No. 02–7853. PARISE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–7854. NULL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 509.

No. 02–7856. CASTILLO REYES *v.* GARDNER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–7865. LIPSCOMB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 739.

No. 02–7866. KERR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 47 Fed. Appx. 85.

No. 02–7867. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 740.

No. 02–7869. FRANCIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–7870. ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7871. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 586.

No. 02–7873. BROWN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–7876. SHIRLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 740.

No. 02–7877. STREET *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 520.

No. 02–7878. ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 293 F. 3d 1120.

No. 02–7881. JONES *v.* TATE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7882. AMANKWA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–7883. KRUECK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7884. DOYHARZABAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7885. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 684.

No. 02–7886. CASSIDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 428.

No. 02–7887. CHAVEZ-GUIDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–7888. SANTANA CONCHA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 294 F. 3d 1248.

No. 02–7889. AVILES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 47 Fed. Appx. 24.

No. 02–7890. COPELAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 304 F. 3d 533.

No. 02–7891. POOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 200.

No. 02–7892. MODENA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 302 F. 3d 626.

No. 02–7893. PEREZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–7894. PELAYO-JIMINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 447.

No. 02–7895. OGROD, AKA PERSONS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 53 Fed. Appx. 604.

No. 02–7898. MARRERO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 299 F. 3d 653.

No. 02–7900. KENDRICKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 822.

No. 02–7902. PETTY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 871.

No. 02–7911. REYES-MAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 305 F. 3d 362.

No. 02–7912. QUINONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 959.

No. 02–7917. VASQUEZ-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–7922. CARLISLE *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 02–7924. FREDERICK *v.* ROMINE, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 308 F. 3d 192.

No. 02–7926. GONZALES, AKA RAMOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–7928. TRAMBLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 306 F. 3d 295.

No. 02–7931. REID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 57.

No. 02–7932. ROJAS RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–7933. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7935. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 855.

No. 02–7942. HUBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7943. GURS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 104.

No. 02–7944. JARAMILLO-REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 741.

No. 02–7947. MINORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 1109.

No. 02–7955. NEWMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 362.

No. 02–7961. WEEKES *v.* FLEMING, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 301 F. 3d 1175.

No. 02–7965. FONTANEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 291 F. 3d 87.

No. 02–7966. CARVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 299 F. 3d 710.

No. 02–7970. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 302.

No. 02–249. PEABODY COAL CO. *v.* GROVES ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 277 F. 3d 829. Reported below: 844 So. 2d 531.

No. 02–327. ALABAMA *v.* MOFFITT. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 844 So. 2d 531.

No. 02–405. FORD ET AL. *v.* GUILLERMO GARCIA ET AL. C. A. 11th Cir. Motion of Center for Justice & Accountability for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 289 F. 3d 1283.

No. 02–500. ATLANTIC RICHFIELD CO. ET AL. *v.* UNITED STATES ET AL.; and

No. 02–506. SHELL OIL CO. ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 294 F. 3d 1045.

No. 02–508. UNITED STATES ET AL. EX REL. HANSEN *v.* CARGILL, INC., ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 26 Fed. Appx. 736.

No. 02–595. UNITED TECHNOLOGIES CORP. *v.* DENSBERGER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF DENSBERGER, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 297 F. 3d 66.

No. 02–670. HAUGHTON ET UX. *v.* WAL-MART STORES, INC. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 46 Fed. Appx. 620.

No. 02–822. BOYCE ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 36 Fed. Appx. 612.

No. 02–7318. JAMES *v.* RAMIREZ-PALMER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–7619. MARTINEZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 295 F. 3d 1041.

No. 02–579. MCDERMOTT *v.* MOORE ET AL. C. A. 4th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 33 Fed. Appx. 148.

No. 02–680. ENGLISH ET AL. *v.* BOARD OF EDUCATION OF THE TOWN OF BOONTON ET AL. C. A. 3d Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 301 F. 3d 69.

No. 02–603. UNITED STATES TOBACCO CO. ET AL. *v.* CONWOOD CO., L. P., ET AL. C. A. 6th Cir. Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 290 F. 3d 768.

No. 02–661. DAIMLERCHRYSLER CORP. ET AL. *v.* OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS ET AL. C. A. 3d Cir. Motion of 3M Co. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 300 F. 3d 368.

No. 02–6378. ROBINSON *v.* MULLIN, WARDEN. C. A. 10th Cir. Motion of petitioner to strike brief in opposition denied. Certiorari denied. Reported below: 35 Fed. Appx. 715.

No. 02–7706. BROWN *v.* HEMINGWAY, WARDEN, ET AL. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 01–1729. COUGHLIN ET UX. *v.* ALABAMA, *ante*, p. 818;

No. 01–1765. EARLY, WARDEN, ET AL. *v.* PACKER, *ante*, p. 3;

No. 01–10034. JACKSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, *ante*, p. 832;

No. 01–10145. CARTER *v.* CAIN, WARDEN, *ante*, p. 836;

No. 01–10375. BOWEN *v.* NORTH CAROLINA ET AL., *ante*, p. 843;

No. 01–10673. SMEDLEY *v.* ALABAMA, *ante*, p. 856;

No. 01–10720. SOUCH *v.* SCHIAVO, DEPUTY WARDEN, *ante*, p. 859;

No. 01–10798. MOORE *v.* TEXAS, *ante*, p. 864;

No. 01–10840. TAYLOR *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL., *ante*, p. 866;

No. 01–10850. CORREA *v.* UNITED STATES, *ante*, p. 867;

No. 01–10871. CUEVAS *v.* AYERS, WARDEN, ET AL., *ante*, p. 868;

No. 02–74. DOWNS *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 882;

No. 02–137. WOODFORD, WARDEN *v.* VISCIOTTI, *ante*, p. 19;

No. 02–161. VELEZ-RUIZ *v.* TRIMBLE, *ante*, p. 886;

No. 02–177. ALDRIDGE ET AL. *v.* GOODYEAR TIRE & RUBBER CO., INC., *ante*, p. 1000;

No. 02–191. YOHN *v.* UNIVERSITY OF MICHIGAN REGENTS ET AL., *ante*, p. 1018;

No. 02–259. MONAGHAN *v.* TREBEK ET AL., *ante*, p. 974;

No. 02–350. SALVADOR ET UX. *v.* LAKE GEORGE PARK COMMISSION ET AL., *ante*, p. 1002;

No. 02–456. ROJAS *v.* IONICS, INC., ET AL., *ante*, p. 1030;

No. 02–491. MICCOSUKEE TRIBE OF INDIANS OF FLORIDA *v.* TAMIAMI PARTNERS, LTD., *ante*, p. 1030;

No. 02–494. EDWARDS *v.* DEPARTMENT OF THE AIR FORCE ET AL., *ante*, p. 1003;

No. 02–5086. HANDAKAS *v.* UNITED STATES, *ante*, p. 894;

No. 02–5148. LATTIER-HOLMES *v.* PEOPLES STATE BANK, *ante*, p. 897;

No. 02–5219. SEATON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 902;

No. 02–5256. SCHWARTZ *v.* DOLLAR BANK, *ante*, p. 904;

No. 02–5399. SINGLETON *v.* FLOYD, SUPERINTENDENT, GLADES CORRECTIONAL INSTITUTION, ET AL., *ante*, p. 913;

No. 02–5405. IN RE THOMAS, *ante*, p. 810;

No. 02–5522. COZZOLINO *v.* FEDERAL BUREAU OF INVESTIGATION ET AL., *ante*, p. 920;

No. 02–5603. SOSA *v.* MCKEE ET AL., *ante*, p. 951;

No. 02–5649. MCCARTNEY *v.* CAIN, WARDEN, *ante*, p. 953;

No. 02–5749. IN RE BOWELL, *ante*, p. 811;

No. 02–5769. LONG *v.* KENTUCKY ET AL., *ante*, p. 955;

No. 02–5832. ROBERSON *v.* RICHARDS ET AL., *ante*, p. 957;
No. 02–5935. HARRIOTT *v.* UNITED STATES, *ante*, p. 935;
No. 02–5939. ZHARN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 959;
No. 02–6047. HARLOW ET AL. *v.* RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, *ante*, p. 1005;
No. 02–6130. PAYNE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1006;
No. 02–6171. IN RE PORTER, *ante*, p. 999;
No. 02–6172. O'DONNELL *v.* UNITED STATES, *ante*, p. 962;
No. 02–6213. SAUVE *v.* METHODIST HOSPITAL, *ante*, p. 1008;
No. 02–6290. RAHEEM *v.* GEORGIA, *ante*, p. 1021;
No. 02–6293. BRANNAN *v.* GEORGIA, *ante*, p. 1021;
No. 02–6295. RODORIQUEZ SEPEDA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1009;
No. 02–6353. COLE *v.* PENNSYLVANIA ET AL., *ante*, p. 1009;
No. 02–6387. REMBA *v.* ROE, WARDEN, ET AL., *ante*, p. 1021;
No. 02–6413. TAYLOR *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 1010;
No. 02–6468. VLIET *v.* RENICO, WARDEN, *ante*, p. 1035;
No. 02–6472. COLLINS ET AL. *v.* FCC/NATIONAL BANK, *ante*, p. 1035;
No. 02–6875. BROWN *v.* UNITED STATES, *ante*, p. 1037; and
No. 02–7086. LAWSON *v.* UNITED STATES, *ante*, p. 1062. Petitions for rehearing denied.

No. 01–1832. MOSBY *v.* UNITED STATES, *ante*, p. 824; and
No. 02–154. SEXTON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, *ante*, p. 886. Motions of petitioners for leave to proceed further herein *in forma pauperis* granted. Petitions for rehearing denied.

No. 01–9968. BREDEMANN *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 830;
No. 01–10555. BREDEMANN *v.* GRANT ET AL., *ante*, p. 849; and
No. 02–5789. POINTER *v.* ST. LOUIS UNIVERSITY SCHOOL OF LAW, *ante*, p. 931. Motions for leave to file petitions for rehearing denied.

No. 02–5917. KAHVEDZIC *v.* REPUBLIC OF CROATIA ET AL., *ante*, p. 966. Motion of petitioner to defer consideration of peti-

tion for rehearing denied. Petition for rehearing denied. JUSTICE SCALIA took no part in the consideration or decision of this motion and this petition.

JANUARY 14, 2003

Miscellaneous Order

No. 02–8451 (02A566). IN RE GALLAMORE. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Rehearing Denied

No. 01–8483 (02A560). GALLAMORE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 535 U. S. 1021. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Motion for leave to file petition for rehearing denied.

JANUARY 16, 2003

Certiorari Denied

No. 02–8457 (02A568). REVILLA *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Certiorari denied.

JANUARY 17, 2003

Dismissal Under Rule 46

No. 02–6896. LOWREY *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari dismissed under this Court's Rule 46.

Probable Jurisdiction Noted

No. 02–182. GEORGIA *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. Appeal from D. C. D. C. Probable jurisdiction noted. Brief of appellant is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 3, 2003. Brief of appellees is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 2, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 21,

2003. This Court's Rule 29.2 does not apply. Reported below: 195 F. Supp. 2d 25 and 204 F. Supp. 2d 4.

Certiorari Granted

No. 02–299. ENTERGY LOUISIANA, INC. *v.* LOUISIANA PUBLIC SERVICE COMMISSION ET AL. Sup. Ct. La. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 3, 2003. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 2, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 21, 2003. This Court's Rule 29.2 does not apply. Reported below: 815 So. 2d 27.

No. 02–695. FITZGERALD, TREASURER OF IOWA *v.* RACING ASSOCIATION OF CENTRAL IOWA ET AL. Sup. Ct. Iowa. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 3, 2003. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 2, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 21, 2003. This Court's Rule 29.2 does not apply. Reported below: 648 N. W. 2d 555.

JANUARY 21, 2003

Certiorari Granted—Vacated and Remanded

No. 01–10940. PRICE *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *LaBonte*, 520 U. S. 751, 759–760 (1997), and the Solicitor General's acknowledgment that the Court of Appeals "erred in concluding that petitioner's drug possession offense qualified as a predicate felony" under 18 U. S. C. § 924(c) in the absence of notice under 21 U. S. C. § 851(a). Brief in Opposition 12. Reported below: 31 Fed. Appx. 158.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

Five Members of this Court have previously expressed their disapproval of vacating and remanding a Court of Appeals deci-

sion favorable to the Government in response to the Government's acknowledgment of error, not in the *judgment* below, but merely in the *reasoning* on which the lower court relied. See *Lawrence* v. *Chater*, 516 U. S. 163, 183 (1996) (SCALIA, J., joined by THOMAS, J., dissenting). See also *Alvarado* v. *United States*, 497 U. S. 543, 545–546 (1990) (REHNQUIST, C. J., joined by O'CONNOR, SCALIA, and KENNEDY, JJ., dissenting). I write to record my continuing conviction that, in general, we have no *power* to vacate a judgment that has not been shown to be (or been conceded to be) in error; to explain why the Government's concession of error in reasoning does not in any way undermine the Fifth Circuit's judgment; and (while I am at it) to explain why the judgment here, insofar as the issues raised in this petition are concerned, is quite obviously correct.

I

On February 20, 1998, a police officer stopped petitioner's truck for a traffic violation and noticed a gun magazine on the dashboard. When asked if he had any weapons in the vehicle, petitioner produced a handgun. The officer then arrested petitioner and took him to the police station, where crack cocaine was discovered in his socks. An ensuing indictment charged petitioner with one count of possession of cocaine base with intent to distribute in violation of 21 U. S. C. § 841(a)(1),[1] and one count of using and carrying a firearm during a drug trafficking crime in violation of 18 U. S. C. § 924(c).[2] At trial, the District Court instructed the jury that it could convict petitioner of the lesser included offense of simple possession of a controlled substance, see 21 U. S. C. § 844(a),[3] if they chose to acquit peti-

[1] Section 841(a)(1) provides:

"Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

"to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

[2] Section 924(c)(1)(A) imposes penalties on "any person who, during and in relation to any crime of violence or drug trafficking crime . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm . . . ."

[3] Section 844(a) provides:

"It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this

tioner as to § 841(a)(1). The District Court further instructed the jury that either possession with intent to distribute or simple possession of cocaine base would be a felony offense that could serve as an underlying "drug trafficking crime" to support a conviction under 18 U. S. C. § 924(c).

The jury acquitted petitioner of possession with intent to distribute but convicted him of the lesser included offense of simple possession. The jury also returned a guilty verdict on the § 924(c) charge. The District Court imposed a 63-month sentence for the 21 U. S. C. § 844(a) offense and a consecutive 60-month sentence under 18 U. S. C. § 924(c). The Fifth Circuit affirmed on direct appeal. See *United States* v. *Price*, 180 F. 3d 266, cert. denied, 528 U. S. 944 (1999).

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subchapter or subchapter II of this chapter. It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 823 of this title or section 958 of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000. Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of $1,000, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram."

Petitioner then filed a 28 U. S. C. § 2255 motion, claiming that: (1) his 63-month sentence under 21 U. S. C. § 844(a) exceeded the maximum authorized punishment; (2) his simple possession conviction was a misdemeanor and therefore could not constitute a "drug trafficking crime" for his 18 U. S. C. § 924(c) conviction; and (3) his trial and appellate counsel rendered ineffective assistance in failing to raise these claims at trial and on direct appeal. The District Court denied the motion, but the Fifth Circuit granted a certificate of appealability as to the ineffective-assistance claims. On the merits of the appeal, the Fifth Circuit concluded that petitioner's attorneys should have objected to the 63-month sentence imposed by the District Court under 21 U. S. C. § 844(a), and that their failure to do so violated petitioner's Sixth Amendment rights under *Strickland* v. *Washington*, 466 U. S. 668 (1984). This was so, the Fifth Circuit explained, because the trial court must have sentenced petitioner under the third sentence of § 844(a),[4] the only part of the statute allowing a sentence as high as 63 months (it requires 5 to 20 years for simple possession of five grams or more of a mixture or substance that contains cocaine base). But since the third sentence of § 844(a) is not a lesser included offense of § 841(a)(1), it cannot qualify as the offense of conviction under the indictment and the lesser included instruction in this case. The Fifth Circuit further held that petitioner suffered prejudice because he would have received a lighter sentence under § 844(a) but for his attorneys' errors.

The Fifth Circuit refused, however, to grant habeas relief as to petitioner's 18 U. S. C. § 924(c) conviction, rejecting petitioner's contention that his 21 U. S. C. § 844(a) conviction could not serve as a "drug trafficking crime" under 18 U. S. C. § 924(c) because it was not a felony offense. See § 924(c)(2) ("For purposes of this subsection, the term 'drug trafficking crime' means *any felony* punishable under the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Law Enforcement Act" (emphasis added; citations omitted)). As petitioner saw matters, the maximum prison sentence he could receive under 21 U. S. C. § 844(a) was one year. § 844(a) ("Any person who violates this subsection may be sentenced to a term of

[4] The court was referring to the sentence beginning with the word "Notwithstanding." This is actually the *fourth* sentence of § 844(a), but my discussion will accept the Court of Appeals' math.

imprisonment of not more than 1 year, and shall be fined a minimum of $1,000, or both . . .''). The Fifth Circuit disagreed, claiming that if the trial court had correctly sentenced petitioner under § 844(a), it would have noted his two prior drug convictions, making him eligible for a 2-year prison sentence. *Ibid.* (providing increased sentence for defendants with a "prior convictio[n] for any drug, narcotic, or chemical offense chargeable under the law of any State''). In the Fifth Circuit's view, this rendered petitioner's § 844(a) offense a felony, see 18 U. S. C. § 3559(a) (any offense for which a sentence of more than one year may be imposed is a felony), and meant that his counsel could not be faulted for failing to challenge the § 924(c) conviction. Judgt. order reported at 31 Fed. Appx. 158 (2001).

Petitioner now seeks review of the Fifth Circuit's denial of habeas relief with respect to his § 924(c) conviction. In his petition for certiorari, petitioner argues that the maximum punishment for his 21 U. S. C. § 844(a) offense was one year because the Government did not file a notice, in advance of trial, that it would seek to rely on petitioner's prior drug convictions to obtain an increased punishment. See § 851(a)(1);[5] *United States* v. *LaBonte*, 520 U. S. 751, 754, n. 1 (1997) ("If the Government does not file such notice, . . . the lower sentencing range will be applied even though the defendant may otherwise be eligible for the increased penalty''). Petitioner claims that, absent a § 851(a)(1) notice, his conviction under § 844(a) was only a misdemeanor and could not be used to support a conviction under 18 U. S. C. § 924(c). The Government concedes that "petitioner's drug possession offense could not be treated as a felony . . . given the government's failure to file a notice of enhancement under 21 U. S. C. § 851(a),''

[5] Section 851(a)(1) provides:

"No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence."

and thus acknowledges that the Fifth Circuit's "*reasoning* is incorrect." Brief in Opposition 13, 10–11 (emphasis added). The Government maintains, however, that the Fifth Circuit's judgment denying habeas relief is proper. *Id.*, at 13–14.

II

This Court has no grounds on which to set aside the Fifth Circuit's judgment, since the Government has not conceded error in that judgment—and indeed insists that it is correct. Moreover, even a cursory evaluation of petitioner's contentions reveals that the Fifth Circuit's judgment was entirely correct. Petitioner cannot establish a *Strickland* claim with respect to his 18 U. S. C. § 924(c) conviction because that conviction was proper.

The jury found petitioner guilty, beyond a reasonable doubt, of having committed a drug trafficking crime while using or carrying a firearm. The trial court had instructed the jury:

> "'A "drug trafficking crime" means any felony punishable under the Controlled Substances Act. Possession with intent to distribute cocaine base and possession of more than five grams of cocaine base are both felony offenses.'" Brief in Opposition 4.

This instruction correctly stated the law. Simple possession of more than five grams of cocaine base is a felony because it is punishable by a mandatory minimum sentence of five years of imprisonment (even without any prior convictions). See § 924(c)(2); 21 U. S. C. § 844(a). And there was ample evidence to support a finding that petitioner committed such a felony while using or carrying a firearm: He stipulated that the amount of cocaine base seized by the police was 6.7 grams.

The fact (noted by the Fifth Circuit) that petitioner was not *convicted* of possession of more than five grams of cocaine base is not relevant to his 18 U. S. C. § 924(c) conviction. Section 924(c) does not require that the defendant be *convicted* of the underlying "drug trafficking crime," but merely that he be found beyond a reasonable doubt to have *committed* such a crime while using or carrying a firearm. *Young* v. *United States*, 124 F. 3d 794, 800 (CA7 1997). Since he was so found (the § 924(c) conviction must have been based on the simple-possession instruction, since the jury acquitted petitioner of the separate 21 U. S. C. § 841 charge of possession with intent to distribute), and since there was ample

evidence to support that finding, neither trial nor appellate counsel was ineffective for failing to challenge the 18 U. S. C. § 924(c) conviction.

* * *

For the foregoing reasons I respectfully dissent from today's judgment and would deny the petition for certiorari.

JUSTICE KENNEDY, dissenting.

For the reasons JUSTICE SCALIA explains in his dissent from today's judgment, *ante*, at 1157 and this page, in my view, our holding in *United States* v. *LaBonte*, 520 U. S. 751 (1997), has no bearing upon the question whether the petitioner received ineffective assistance of counsel and does not suggest a result different from that reached by the Court of Appeals. For this reason, I too dissent from the judgment of the Court and would deny the petition for certiorari.

Miscellaneous Orders

No. 02M47. JENKINS *v.* WALLS, WARDEN. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 02M48. MURPHY *v.* REINHARD, COMMISSIONER, VIRGINIA DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 02–728. VALDIVIESO ET AL. *v.* ATLAS AIR, INC. C. A. 11th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 02–7510. BANDY *v.* SPRINT MID-ATLANTIC TELECOM, INC. C. A. 4th Cir.; and

No. 02–7565. GIFFORD *v.* VAIL RESORTS, INC. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 11, 2003, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 02–8157. IN RE CUNNINGHAM;

No. 02–8161. IN RE ZULUAGA; and

No. 02–8182. IN RE RIES. Petitions for writs of habeas corpus denied.

No. 02–8167. IN RE VISINTINE. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 02–7729. IN RE ABDUL-MUQSIT. Petition for writ of mandamus denied.

Certiorari Denied

No. 01–1366. PARDEE COAL CO., INC., ET AL. *v.* HOLLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 269 F. 3d 424.

No. 02–414. LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT *v.* CHAMPAGNE ET AL. Dist. Ct. La., Iberia Parish. Certiorari denied.

No. 02–460. SCHNEIDER *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 575.

No. 02–697. GOMEZ ET UX. *v.* ATKINS. C. A. 4th Cir. Certiorari denied. Reported below: 296 F. 3d 253.

No. 02–740. JAMES ET AL. *v.* MEOW MEDIA, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 300 F. 3d 683.

No. 02–741. MACKLIN *v.* CITY OF NEW ORLEANS, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 293 F. 3d 237.

No. 02–744. COLEMAN *v.* SIMPSON, TRUSTEE. C. A. 4th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 251.

No. 02–745. CANNON *v.* SWINDELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 905.

No. 02–746. ALABAMA-COUSHATTA TRIBE OF TEXAS *v.* AMERICAN TOBACCO CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 225.

No. 02–747. MARTIN, INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF MARTIN, DECEASED *v.* ARKANSAS BLUE CROSS AND BLUE SHIELD, A MUTUAL INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 299 F. 3d 966.

No. 02–764. UNIVERSAL GUARANTY LIFE INSURANCE CO. ET AL. *v.* MORLAN. C. A. 7th Cir. Certiorari denied. Reported below: 298 F. 3d 609.

No. 02–766. ZAIONTZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–771. ADAMS-SOW *v.* MEDICAL COLLEGE OF HAMPTON ROADS/EASTERN VIRGINIA MEDICAL SCHOOL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 126.

No. 02–773. BROWN, JOINT TENANT TRUSTEE *v.* FISHER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 522.

No. 02–777. LI YU *v.* PERRY, GOVERNOR OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–784. CITY OF AKRON, OHIO, ET AL. *v.* KILBY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 290 F. 3d 813.

No. 02–820. LIVERMAN *v.* COMMITTEE ON THE JUDICIARY, UNITED STATES HOUSE OF REPRESENTATIVES. C. A. 10th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 825.

No. 02–825. MITRANO *v.* MARTIN. C. A. 1st Cir. Certiorari denied.

No. 02–826. COALE *v.* INDIANA SUPREME COURT DISCIPLINARY COMMISSION. Sup. Ct. Ind. Certiorari denied. Reported below: 775 N. E. 2d 1079.

No. 02–827. EASTERN ASSOCIATED COAL CORP. *v.* SKAGGS. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 212 W. Va. 248, 569 S. E. 2d 769.

No. 02–836. STEARNS *v.* NCR CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 297 F. 3d 706.

No. 02–840. BONTA, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES *v.* CHILDREN'S HOSPITAL AND MEDICAL CENTER ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 97 Cal. App. 4th 740, 118 Cal. Rptr. 2d 629.

No. 02–843. WENZEL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–844. ATHANASIADES *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 02–894. MITRANO *v.* KELLY. Fam. Ct. of Lebanon, Grafton County, N. H. Certiorari denied.

No. 02–897. HUNT *v.* UNITED STATES ARMY. C. A. 6th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 567.

No. 02–902. GHALI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 281.

No. 02–918. CASH COW SERVICES OF FLORIDA, LLC, ET AL. *v.* BUTLER, UNITED STATES TRUSTEE. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1261.

No. 02–922. SELLERS *v.* CHANDLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 731.

No. 02–923. MCDONALD *v.* EXXONMOBIL CHEMICAL CO. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 917.

No. 02–930. KETTENBURG *v.* FEDERAL GOVERNMENT. C. A. 2d Cir. Certiorari denied.

No. 02–932. UNDERWOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 820.

No. 02–6252. OLIVER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–6689. BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 316.

No. 02–6859. PHILLIPS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 807 So. 2d 713.

No. 02–6924. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–6925. AIKEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 F. 3d 225.

No. 02–7001. HOLLOWAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 F. 3d 1331.

No. 02–7305. COLBURN *v.* TEXAS. 221st Jud. Dist. Ct. Tex., Montgomery County. Certiorari denied.

No. 02–7402. BREWER *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 284.

No. 02–7422. GANZIE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–7438. HAMMOND *v.* GONZALEZ, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7439. HARRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–7441. GOLDWATER *v.* HURTT. Ct. App. Ariz. Certiorari denied.

No. 02–7442. FISHER *v.* GREENVILLE COUNTY SHERIFF'S OFFICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 144.

No. 02–7444. GAY *v.* BLAINE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7445. SIAO-PAO *v.* TRAVIS, CHAIRPERSON, NEW YORK BOARD OF PAROLE. C. A. 2d Cir. Certiorari denied.

No. 02–7446. SMITH *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 02–7447. BRUNER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 02–7453. OWENS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7456. GIBBS *v.* SMITHSONIAN INSTITUTION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–7458. GONZALEZ *v.* FAIRMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 97.

No. 02–7477. DENNES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7481. CROCKETT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 799 A. 2d 166.

No. 02–7482. PIERCE *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 656.

No. 02–7483. HORNADAY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7488. YARBROUGH *v.* LIFETOUCH NATIONAL SCHOOL STUDIOS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 654.

No. 02–7492. WILLEMS *v.* SEEFELDT, TRUSTEE. C. A. 9th Cir. Certiorari denied.

No. 02–7495. BELASCO *v.* MORRISON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–7499. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7508. ASHANTI *v.* AMERICAN TOBACCO COS. ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7516. DOMINGUEZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–7520. LIEBERMAN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 201 Ill. 2d 300, 776 N. E. 2d 218.

No. 02–7522. WHITE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 355 N. C. 696, 565 S. E. 2d 55.

No. 02–7528. BORTH *v.* KELLEHER ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 02–7538. ZIEGLER *v.* BIRKETT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–7542. REYNOLDS *v.* WACKENHUT CORRECTION CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 325.

No. 02–7544. RICHARDS *v.* ROSE. Sup. Ct. Va. Certiorari denied.

No. 02–7545. RODES *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 769 N. E. 2d 713.

No. 02–7547. JENKINS *v.* FAIRMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7549. TURNPAUGH *v.* MICHIGAN. Cir. Ct. Mich., Genesee County. Certiorari denied.

No. 02–7551. COOPER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7555. CATALDO *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7556. TERRY ET AL. *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 829 So. 2d 919.

No. 02–7560. HERNANDEZ, AKA GUADALUPE FRANCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 813.

No. 02–7564. FAIR *v.* CITY OF GRESHAM, OREGON. C. A. 9th Cir. Certiorari denied.

No. 02–7566. WOOTTEN *v.* FORTUNE BRANDS, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–7567. WHITE *v.* DAYCO. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 870.

No. 02–7569. WILKERSON *v.* SPRINGFIELD PUBLIC SCHOOL DISTRICT NO. 186. C. A. 7th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 260.

No. 02–7570. DA WEN YU *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–7571. WEISS *v.* QVC, INC. C. A. 9th Cir. Certiorari denied.

No. 02–7575. CLARK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–7577. EVANS *v.* KINGSVILLE INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–7579. DEDAUX *v.* MISSISSIPPI DEPARTMENT OF CORRECTIONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 480.

No. 02–7581. ANDREWS *v.* CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–7588. MARTINEZ TERAN *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7590. HOOKER *v.* MULLIN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 293 F. 3d 1232.

No. 02–7594. STEPHENS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 02–7597. SHABAZZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 289 App. Div. 2d 1059, 735 N. Y. S. 2d 691.

No. 02–7598. RICHARDSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7626. MOORE *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7666. TOLBERT *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7738. BARNES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7797. HUNT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 854 So. 2d 1221.

No. 02–7817. ARSBERRY *v.* JAIMET, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–7822. LOPEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7837. AFRASA *v.* DISTRICT ATTORNEY OF THE COUNTY OF DELAWARE ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7899. JOHNSTON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 288 F. 3d 1048.

No. 02–7910. COLBURN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 412.

No. 02–7918. THOMAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7919. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7925. HARPER *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 158.

No. 02–7972. SALAZAR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–7973. BASHORUN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 157.

No. 02–7974. MEZA-PONCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 437.

No. 02–7975. MURPHY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 933.

No. 02–7976. JIMENEZ-DOMINQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 296 F. 3d 863.

No. 02–7979. TURAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 177.

No. 02–7991. CRAWFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–7995. LUGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 254.

No. 02–7996. MARTINEZ-DELEON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 540.

No. 02–7997. MARQUEZ DE ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 916.

No. 02–7998. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 24.

No. 02–8001. BENDER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 304 F. 3d 161.

No. 02–8006. WILBOURN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 350.

No. 02–8010. ZAMORANO-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 942.

No. 02–8011. VANHORN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 296 F. 3d 713.

No. 02–8013. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 934.

No. 02–8017. ASBERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8027. SOFSKY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 31 Fed. Appx. 754.

No. 02–8035. RAMIREZ-BURGOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 313 F. 3d 23.

No. 02–8043. COLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 49 Fed. Appx. 392.

No. 02–8044. PEREZ-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 180.

No. 02–8145. VOLDEN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 02–347. LOSKILL *v.* BARNETT BANKS, INC. SEVERANCE PAY PLAN ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 289 F. 3d 734.

No. 02–592. HASAN *v.* DEPARTMENT OF LABOR ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 298 F. 3d 914.

No. 02–593. HALL HOLDING CO., INC., ET AL. *v.* CHAO, SECRETARY, DEPARTMENT OF LABOR. C. A. 6th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 285 F. 3d 415.

Rehearing Denied

No. 02–5179. CARTER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 899;

No. 02–5407. PRICE *v.* UNITED STATES, *ante*, p. 913;

No. 02–6302. YOWEL, AKA ROBINSON *v.* WARNER, GOVERNOR OF VIRGINIA, ET AL., *ante*, p. 1032; and

No. 02–6627. POINTER *v.* ST. LOUIS COUNTY SPECIAL SCHOOL DISTRICT, *ante*, p. 1053. Petitions for rehearing denied.

No. 02–5224. POINTER *v.* PARENTS FOR FAIR SHARE, *ante*, p. 902. Motion of petitioner for leave to file petition for rehearing denied.

JANUARY 22, 2003

Dismissal Under Rule 46

No. 02–810. LOCATING, INC. *v.* PARKS. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 37 Fed. Appx. 901.

Miscellaneous Order

No. 02–8581 (02A594). IN RE LOOKINGBILL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 02–8580 (02A593). LOOKINGBILL *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 24, 2003

Certiorari Granted

No. 02–306. BENEFICIAL NATIONAL BANK ET AL. *v.* ANDERSON ET AL. C. A. 11th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 7, 2003. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 4, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 23, 2003. This Court's Rule 29.2 does not apply. Reported below: 287 F. 3d 1038.

No. 02–371. VIRGINIA *v.* HICKS. Sup. Ct. Va. Motion of City of Richmond et al. for leave to file a brief as *amici curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 7, 2003. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 4, 2003. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 23, 2003. This Court's Rule 29.2 does not apply. Reported below: 264 Va. 48, 563 S. E. 2d 674.

JANUARY 27, 2003

Miscellaneous Orders. (For the Court's order approving revisions to the Rules of this Court, see *post*, p. 1248.)

No. 02M49. WYCOFF *v.* MATHIS, WARDEN; and

No. 02M50. OUTLER *v.* CONLEY, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01–1435. CLACKAMAS GASTROENTEROLOGY ASSOCIATES, P. C. *v.* WELLS. C. A. 9th Cir. [Certiorari granted, 536 U. S. 990.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–42. FRANCHISE TAX BOARD OF CALIFORNIA *v.* HYATT ET AL. Sup. Ct. Nev. [Certiorari granted, *ante*, p. 946.] Motion of Florida et al. for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 02–258. JINKS *v.* RICHLAND COUNTY, SOUTH CAROLINA, ET AL. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 972.] Motion of the Solicitor General for divided argument granted.

No. 02–361. UNITED STATES ET AL. *v.* AMERICAN LIBRARY ASSN., INC., ET AL. D. C. E. D. Pa. [Probable jurisdiction noted, *ante*, p. 1017.] Motion of appellees for divided argument denied.

No. 02–8068. HUNT *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 18, 2003, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 02–8252. IN RE FALCON; and
No. 02–8301. IN RE GUNNELL. Petitions for writs of habeas corpus denied.

No. 02–804. IN RE NEARHOOD. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 02–6683. CASTRO *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Does this Court have jurisdiction to review the Eleventh Circuit's decision affirming the dismissal of a § 2255 petition for writ of habeas corpus as second or successive?" Reported below: 290 F. 3d 1270.

Certiorari Denied

No. 01–1710. EMPIRE BLUE CROSS AND BLUE SHIELD *v.* BYRNES ET AL.; and EMPIRE BLUE CROSS AND BLUE SHIELD *v.* ALICEA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 274 F. 3d 76 (first judgment) and 90 (second judgment).

No. 01–10592. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 991.

No. 02–136. PIN YEN YANG ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 281 F. 3d 534.

No. 02–527. BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL–CIO, ET AL. *v.* ALLBAUGH, DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 295 F. 3d 28.

No. 02–615. DUBON-OTERO *v.* UNITED STATES; and
No. 02–616. GARIB BAZAIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 292 F. 3d 1.

No. 02–621. BIDEGARY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 506.

No. 02–633. MATTEL, INC. *v.* MCA RECORDS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 296 F. 3d 894.

No. 02–636. D&J ENTERPRISES, INC. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 504.

No. 02–643. FLAHERTY *v.* METROMAIL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 352.

No. 02–648. CAMPBELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 45 Fed. Appx. 50.

No. 02–709. SCHUETZ *v.* BANC ONE MORTGAGE CORP. C. A. 9th Cir. Certiorari denied. Reported below: 292 F. 3d 1004.

No. 02–772. PALUMBO *v.* PUBLISHERS CLEARING HOUSE ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–774. KARLSEN ET AL. *v.* SILVA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 486.

No. 02–789. AFRICAN METHODIST EPISCOPAL ZION CHURCH ET AL. *v.* FROM THE HEART CHURCH MINISTRIES, INC., ET AL. Ct. App. Md. Certiorari denied. Reported below: 370 Md. 152, 803 A. 2d 548.

No. 02–792. ROSS *v.* MOORE, CHIEF JUSTICE, SUPREME COURT OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 980.

No. 02–793. FJELLINE ET AL. *v.* GRECO ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–797. HANLON ET AL. *v.* SHOMEN KUNG CHIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–800. ARROW COMMUNICATION LABORATORIES, INC., DBA ARCOM, ET AL. *v.* EAGLE COMTRONICS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 305 F. 3d 1303.

No. 02–802. ERWIN *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 122.

No. 02–805. BROKASKI *v.* DELCO SYSTEMS OPERATIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 958.

No. 02–830. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 286 F. 3d 803.

No. 02–849. BLUFF *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 52 P. 3d 1210.

No. 02–870. THOMAS *v.* LOS ANGELES TIMES COMMUNICATIONS LLC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 801.

No. 02–873. FISHER *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 648.

No. 02–881. SMITH ET UX. *v.* UNITED PARCEL SERVICE, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1244.

No. 02–885. ARKANSAS *v.* KEENOM. Sup. Ct. Ark. Certiorari denied. Reported below: 349 Ark. 381, 80 S. W. 3d 743.

No. 02–912. NORTON ET AL. *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 298 F. 3d 547.

No. 02–950. BASS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 505.

No. 02–952. HARDING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–965. McClendon *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 944.

No. 02–985. Loe's Highport, Inc. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 483.

No. 02–992. Weil *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 958.

No. 02–993. Brown *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 303 F. 3d 582.

No. 02–6037. Murray *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 712.

No. 02–6438. Hain *v.* Mullin, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 287 F. 3d 1224.

No. 02–6591. Strong *v.* Illinois Department of Human Services. C. A. 7th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 297.

No. 02–6821. Hahn *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 553.

No. 02–7115. Delgado-Nunez, aka Delgado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 295 F. 3d 494.

No. 02–7136. Douglas *v.* Gibson et al. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 660.

No. 02–7476. Hawkins *v.* Mullin, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 291 F. 3d 658.

No. 02–7548. Hammond *v.* Head, Warden. Super. Ct. Butts County, Ga. Certiorari denied.

No. 02–7580. Hernandez *v.* Penrod et al. C. A. 9th Cir. Certiorari denied.

No. 02–7596. Joyner *v.* Morgan, Warden. C. A. 6th Cir. Certiorari denied.

No. 02–7602. Canedo Garcia *v.* Castro, Warden. C. A. 9th Cir. Certiorari denied.

No. 02–7605. COLQUITT *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7611. SHELTON *v.* ST. LOUIS COUNTY, MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 02–7614. WILSON *v.* MINGO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7617. ARDIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 860 So. 2d 916.

No. 02–7620. SMITH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 277 F. 3d 1377.

No. 02–7621. CONNOR *v.* HOWERTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7625. SUCHY *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7631. NORWICK *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 02–7636. CHANDLER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–7637. CELEDON *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7665. NGHE CHI TANG *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7676. PANDO *v.* RYAN. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 310.

No. 02–7677. NORTON *v.* BELL, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 02–7678. POPE *v.* RAY, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 619.

No. 02–7680. LANGFORD *v.* BLACKBURN, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7682. KELBEL *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 648 N. W. 2d 690.

No. 02–7683. KEPLER *v.* HICKMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7685. DIXON *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 364.

No. 02–7691. VELARDE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–7693. BALDWIN *v.* RIVER FOREST BANK. C. A. 7th Cir. Certiorari denied.

No. 02–7700. BROWN *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 644.

No. 02–7704. BROWN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 295 App. Div. 2d 834, 743 N. Y. S. 2d 895.

No. 02–7712. BROOKS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–7714. WRIGHT, AKA WRIGHT-BEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 02–7716. GARCIA *v.* GIURBINO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 881.

No. 02–7717. HANCOCK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7719. HERRERA-JAIMES *v.* UNITED STATES; and VASQUEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 106 (first judgment) and 107 (second judgment).

No. 02–7720. TWILLEY *v.* CITY OF BESSEMER, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7810. BISHOP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 F. 3d 1100.

No. 02–7838. IN SOO CHUN *v.* UWAJIMAYA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 330.

No. 02–7855. PIGNATIELLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 272 F. 3d 159 and 25 Fed. Appx. 23.

No. 02–7879. MONTUE *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 654.

No. 02–7906. ANDERSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 02–7913. ROOT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1222.

No. 02–7921. PARIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7934. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 280 F. 3d 1121.

No. 02–7948. ORTOV *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied.

No. 02–7990. MIULLI *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 699.

No. 02–7999. MATTHEWS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 456.

No. 02–8004. MUCHA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 49 Fed. Appx. 368.

No. 02–8012. DEJESUS MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 193.

No. 02–8018. BERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 483.

No. 02–8020. SCHEIDT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8022. LEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 962.

No. 02–8024. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8031. MCCUTCHEON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 96.

No. 02–8033. BALINT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 822.

No. 02–8036. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 820.

No. 02–8041. JONES *v.* SENKOWSKI, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 42 Fed. Appx. 485.

No. 02–8046. OCHOA AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 560.

No. 02–8059. FAIRLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 541.

No. 02–8065. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 310 F. 3d 912.

No. 02–8066. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 44 Fed. Appx. 532.

No. 02–8067. GALLO-CHAMORRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 287.

No. 02–8069. IMPALA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 476.

No. 02–8070. HERNANDEZ-FUENTES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–8074. HUNTLEY *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–8076. REEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8085. RANDOLPH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 729.

No. 02–8086. SOUZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 309 F. 3d 966.

No. 02–8090. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 601.

No. 02–8096. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 295 F. 3d 817.

No. 02–8097. BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 844.

No. 02–8100. PAULEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 289 F. 3d 254 and 304 F. 3d 335.

No. 02–8102. MARACALIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8104. MYERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8105. ALBERTO MONREAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 301 F. 3d 1127.

No. 02–8109. MAGNUSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 307 F. 3d 333.

No. 02–8110. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8111. LOMELI-MEDRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 509.

No. 02–8112. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 835.

No. 02–8113. ROLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 236.

No. 02–8114. SAUCEDO-MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 307 F. 3d 344.

No. 02–8116. ROSSIS-LOPEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 843.

No. 02–8119. LOPEZ-SEPULVEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 887.

No. 02–8123. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 54 Fed. Appx. 739.

No. 02–8127. RUVALCABA-VARGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 573.

No. 02–8128. RASHKOVSKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 301 F. 3d 1133.

No. 02–8129. REYNOLDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 123.

No. 02–687. POOLE, WARDEN *v.* KILLIAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 282 F. 3d 1204.

No. 02–803. STRAUB, WARDEN *v.* MILLER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 299 F. 3d 570.

No. 02–806. BURKE, WARDEN *v.* HAYNES. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 299 F. 3d 570.

No. 02–807. JACKSON, WARDEN *v.* LYONS. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 299 F. 3d 588.

Rehearing Denied

No. 02–548. CZARINA, LLC *v.* KEMPER DE MEXICO, CAMPANIA DE SEGUROS, S. A., *ante*, p. 1072;

No. 02–570. WALSTON *v.* LOCKHART ET AL., *ante*, p. 1067;

No. 02–574. TDC MANAGEMENT CORP., INC., ET AL. *v.* UNITED STATES, *ante*, p. 1048;

No. 02–5228. NEWSOME *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL., *ante*, p. 1049;

No. 02–6058. LANCE *v.* GEORGIA, *ante*, p. 1050;

No. 02–6189. PRICE *v.* DEPARTMENT OF JUVENILE JUSTICE ET AL., *ante*, p. 1007;

No. 02–6595. RUIZ RIVERA *v.* TREVI CARIBE, INC., *ante*, p. 1053;

No. 02–6601. LEONARD *v.* CORNYN, ATTORNEY GENERAL OF TEXAS, ET AL., *ante*, p. 1053;

No. 02–6654. GONZALEZ *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 1054;

No. 02–6744. OLIVER *v.* BRAXTON, WARDEN, *ante*, p. 1057;

No. 02–7042. HAMILTON *v.* MACK, WARDEN, *ante*, p. 1061;

No. 02–7235. DABNEY *v.* UNITED STATES, *ante*, p. 1066; and

No. 02–7418. WAHAB *v.* UNITED STATES, *ante*, p. 1096. Petitions for rehearing denied.

No. 01–10564. JONES *v.* VIRGINIA DEPARTMENT OF SOCIAL SERVICES ET AL., *ante*, p. 849. Motion of petitioner for leave to file petition for rehearing denied.

No. 02–297. DOYLE *v.* HYDRO NUCLEAR SERVICES ET AL., *ante*, p. 1066. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

JANUARY 28, 2003

Certiorari Denied

No. 02–8687 (02A618). CURRY *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.

No. 02–8702 (02A620). CURRY *v.* COCKRELL, 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.

JANUARY 30, 2003

Dismissal Under Rule 46

No. 02–635. NEW MEXICO DEPARTMENT OF PUBLIC SAFETY ET AL. *v.* MARTINEZ. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 47 Fed. Appx. 513.

Miscellaneous Order

No. 02–8732 (02A623). IN RE RIDDLE. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of

habeas corpus denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition.

FEBRUARY 4, 2003

Miscellaneous Order

No. 02–8877 (02A642). IN RE ELLIOTT. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition.

Certiorari Denied

No. 02–8867 (02A638). ELLIOTT *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.

No. 02–8878 (02A643). KENLEY *v.* ROPER, 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, denied. Certiorari denied.

FEBRUARY 6, 2003

Certiorari Denied

No. 02–7404 (02A626). DUNN *v.* COCKRELL, 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: 302 F. 3d 491.

FEBRUARY 13, 2003

Certiorari Denied

No. 02–9009 (02A676). FIELDS *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Certiorari denied.

February 14, 2003

Dismissal Under Rule 46

No. 02–821. Whetsel *v.* Sherwood et al. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 42 Fed. Appx. 353.

February 21, 2003

Miscellaneous Orders

No. 01–1806. Illinois ex rel. Madigan, Attorney General of Illinois *v.* Telemarketing Associates, Inc., et al. Sup. Ct. Ill. [Certiorari granted *sub nom. Illinois ex rel. Ryan* v. *Telemarketing Associates, Inc.*, *ante*, p. 999.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Association of Fundraising Professionals et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 02–258. Jinks *v.* Richland County, South Carolina, et al. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 972.] Motion of *amici curiae* Alabama et al. and respondent Richland County to allow Alabama et al. to participate in oral argument as *amici curiae* and for divided argument denied.

February 24, 2003

Certiorari Granted—Vacated and Remanded

No. 02–6671. Widner *v.* Crosby, Secretary, Florida Department of Corrections. C. A. 11th 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 *Carey* v. *Saffold*, 536 U. S 214 (2002). Reported below: 46 Fed. Appx. 618.

Certiorari Dismissed

No. 02–7858. Eury *v.* Angelone, Director, Virginia Department of Corrections, et al. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from

petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 02A564. GREEN *v.* BENDEN ET AL. C. A. 7th Cir. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 02A605. BUTLER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for certificate of appealability, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–2336. IN RE DISCIPLINE OF KLIMOW. Sergei Nicholas Klimow, of Upland, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2337. IN RE DISCIPLINE OF PULLEY. Arthur L. Pulley, of New Rochelle, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2338. IN RE DISCIPLINE OF REIS. Agostinho Dias Reis, of Newark, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2339. IN RE DISCIPLINE OF HALL. Harold A. Hall, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2340. IN RE DISCIPLINE OF AYRES-FOUNTAIN. Caroline Patricia Ayres-Fountain, of Hockessin, Del., is suspended from the practice of law in this Court, and a rule will issue, returnable

within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2341. IN RE DISCIPLINE OF LASHER. Alan David Lasher, of Staten Island, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2342. IN RE DISCIPLINE OF BUTIN. Charles S. Butin, of Great Neck, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2343. IN RE DISCIPLINE OF BERGSTEIN. Jeruchom Bergstein, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2344. IN RE DISCIPLINE OF RAGUSA. Sebastian Ragusa, of Hicksville, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2345. IN RE DISCIPLINE OF GRANT. Jeffrey D. Grant, of Mamaroneck, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2346. IN RE DISCIPLINE OF SULLIVAN. Charles W. Sullivan, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 02M51. MOSLEY *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT, DISTRICT GOVERNING BOARD;

No. 02M52. JEFFERSON *v.* MISSOURI DEPARTMENT OF SOCIAL SERVICES;

No. 02M54. SIMON *v.* POTTER, POSTMASTER GENERAL;

No. 02M55. ZARINS ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE;

No. 02M56. MUHAMMAD *v.* BUREAU OF PRISONS ET AL.;

No. 02M57. BOUIE *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL.;

No. 02M58. SCHMUECKLE *v.* MILES, WARDEN;

No. 02M59. MORALES *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY;

No. 02M60. HANSON *v.* UNITED STATES;

No. 02M61. KENT *v.* SOUTHERN CALIFORNIA EDISON CO. ET AL.;

No. 02M62. DAVIES *v.* GREENOUGH ET AL.; and

No. 02M63. HUNTER *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 02M53. IDELLE C. *v.* OVANDO C. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 129, Orig. VIRGINIA *v.* MARYLAND. Motion of the Special Master for allowance of fee and disbursements granted, and the Special Master is awarded a total of $95,378.62 for the period May 1 through December 31, 2002, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 1102.]

No. 01–593. DOLE FOOD CO. ET AL. *v.* PATRICKSON ET AL.; and

No. 01–594. DEAD SEA BROMINE CO., LTD., ET AL. *v.* PATRICKSON ET AL. C. A. 9th Cir. [Certiorari granted, 536 U. S. 956.] Motion of petitioners Dole Food Co. et al. for leave to file a supplemental brief after oral argument granted.

No. 01–1184. UNITED STATES *v.* JIMENEZ RECIO ET AL., *ante*, p. 270. Motion of respondent Francisco Jimenez Recio for appointment of counsel *nunc pro tunc* granted, and it is ordered that M. Karl Shurtliff, Esq., of Boise, Idaho, be appointed to serve as counsel for respondent Francisco Jimenez Recio in this case. Motion of respondent Adrian Lopez-Meza for appointment of counsel *nunc pro tunc* granted, and it is ordered that Thomas A. Sullivan, Esq., of Caldwell, Idaho, be appointed to serve as counsel for respondent Adrian Lopez-Meza in this case.

No. 01–1269. CITY OF CUYAHOGA FALLS, OHIO, ET AL. *v.* BUCKEYE COMMUNITY HOPE FOUNDATION ET AL. C. A. 6th

Cir. [Certiorari granted, 536 U. S. 938.] Motion of respondents for leave to file a supplemental brief after argument denied.

No. 02–524. PRICE, WARDEN *v.* VINCENT. C. A. 6th Cir. [Certiorari granted *sub nom. Jones* v. *Vincent*, *ante*, p. 1099.] Motion for apointment of counsel granted, and it is ordered that David A. Moran, Esq., of Detroit, Mich., be appointed to serve as counsel for respondent in this case.

No. 02–5664. SELL *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 999.] Motion of American Psychiatric Association et al. for leave to file a brief as *amici curiae* granted.

No. 02–7823. MATHIS *v.* STAFFORD COUNTY, VIRGINIA, ET AL. C. A. 4th Cir.;

No. 02–8064. GOBBI *v.* GOBBI. C. A. 4th Cir.; and

No. 02–8107. PEREIRA *v.* CITY OF PLANT CITY, FLORIDA. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 17, 2003, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 02–8340. IN RE DAVIS;

No. 02–8401. IN RE PHELPS; and

No. 02–8752. IN RE JOHNSON-EL. Petitions for writs of habeas corpus denied.

No. 02–895. IN RE DUVALL;

No. 02–7980. IN RE VIVONE; and

No. 02–8015. IN RE NYHUIS. Petitions for writs of mandamus denied.

No. 02–8632. IN RE DETOMASO. Petition for writ of mandamus and/or prohibition denied.

No. 02–8168. IN RE WILSON. Petition for writ of prohibition denied.

Certiorari Granted

No. 02–658. ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 298 F. 3d 814.

No. 02–763. BARNHART, COMMISSIONER OF SOCIAL SECURITY *v.* THOMAS. C. A. 3d Cir. Certiorari granted. Reported below: 294 F. 3d 568.

No. 02–473. UNITED STATES *v.* BANKS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 282 F. 3d 699.

No. 02–749. RAYTHEON CO. *v.* HERNANDEZ. C. A. 9th Cir. Motion of Equal Employment Advisory Council 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: 298 F. 3d 1030.

Certiorari Denied

No. 01–11030. BROWN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 567 Pa. 272, 786 A. 2d 961.

No. 02–531. OKANOGAN SCHOOL DISTRICT NO. 105 ET AL. *v.* BERGESON, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 291 F. 3d 1161.

No. 02–585. PEABODY COAL CO. *v.* GRAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 138.

No. 02–617. PHILLIPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 303 F. 3d 548.

No. 02–655. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 300 F. 3d 415.

No. 02–672. WEISS, DIRECTOR, NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS, KOSHER LAW ENFORCEMENT DIVISION *v.* COMMACK SELF-SERVICE KOSHER MEATS, INC., DBA COMMACK KOSHER, ET AL.; and

No. 02–675. SILVER ET AL. *v.* COMMACK SELF-SERVICE KOSHER MEATS, INC., DBA COMMACK KOSHER, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 294 F. 3d 415.

No. 02–683. WORLD WIDE MINERALS LTD. ET AL. *v.* REPUBLIC OF KAZAKHSTAN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 296 F. 3d 1154.

No. 02–686. PRESCOTT ET AL. *v.* COUNTY OF EL DORADO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 298 F. 3d 844.

No. 02–692. ARCHER-DANIELS-MIDLAND CO. *v.* DELLWOOD FARMS, INC., ET AL.;

No. 02–705. CARGILL, INC. *v.* A & W BOTTLING, INC., ET AL.; and

No. 02–736. A. E. STALEY MANUFACTURING CO. *v.* DELLWOOD FARMS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 295 F. 3d 651.

No. 02–707. DISABLED RIGHTS ACTION COMMITTEE *v.* ARCHON CORP., FKA SANTA FE GAMING CORP. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 820.

No. 02–714. OKLAHOMA EX REL. OFFICE OF STATE FINANCE *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, EX REL. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 292 F. 3d 1261.

No. 02–715. WYATT *v.* HUNT PLYWOOD CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 297 F. 3d 405.

No. 02–737. STEELE ET AL. *v.* INDUSTRIAL DEVELOPMENT BOARD OF METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ET AL.; and

No. 02–936. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY *v.* STEELE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 301 F. 3d 401.

No. 02–738. CUSTOM SHIP INTERIORS ET AL. *v.* ROBERTS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 300 F. 3d 510.

No. 02–739. KIRBY INLAND MARINE, INC. OF MISSISSIPPI, FKA BRENT TRANSPORTATION CO., ET AL. *v.* UNION PACIFIC RAILROAD CO.; and

No. 02–942. UNION PACIFIC RAILROAD CO. *v.* KIRBY INLAND MARINE, INC. OF MISSISSIPPI, AKA BRENT TRANSPORTATION CO., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 296 F. 3d 671.

No. 02–751. SUN PRAIRIE *v.* MCCALEB, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR,

ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 286 F. 3d 1031.

No. 02–759. BLUE RIBBON PROPERTIES, INC., DBA LONG HOLLOW LANDFILL *v.* HARDIN COUNTY FISCAL COURT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 671.

No. 02–765. CALIFORNIA ET AL. *v.* PAIGE. C. A. 9th Cir. Certiorari denied. Reported below: 291 F. 3d 1141.

No. 02–783. BELLSOUTH ADVERTISING & PUBLISHING CORP. *v.* TENNESSEE REGULATORY AUTHORITY ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 79 S. W. 3d 506.

No. 02–818. HAWKINS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 98 Cal. App. 4th 1428, 121 Cal. Rptr. 2d 627.

No. 02–823. ASTER *v.* ASTER. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 02–831. WILKINSON *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 864.

No. 02–833. WILLIAMS *v.* VALENCIA COUNTY SHERIFF'S OFFICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 929.

No. 02–837. ROLLESTON *v.* ESTATE OF SIMS ET AL. Ct. App. Ga. Certiorari denied. Reported below: 255 Ga. App. XXVI.

No. 02–838. MORLEY *v.* HARVEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 40.

No. 02–841. MACKIE *v.* RIESER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 296 F. 3d 909.

No. 02–847. BLIXT ET AL. *v.* BLIXT. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 437 Mass. 649, 774 N. E. 2d 1052.

No. 02–848. SOUTHERN CLAY PRODUCTS, INC. *v.* UNITED CATALYSTS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 43 Fed. Appx. 379.

No. 02–851. WINTERS *v.* MTL SYSTEMS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 985.

No. 02–853. CACCIOLA ET AL. *v.* SIMS COMMUNICATIONS, INC., ET AL. Ct. App. Wash. Certiorari denied. Reported below: 109 Wash. App. 1045.

No. 02–854. ARTIS-JAMES *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 02–860. JOHNSON *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–863. MOREIN *v.* DREXEL UNIVERSITY ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 782 A. 2d 1065.

No. 02–865. LOBO GAMING, INC. *v.* PIT RIVER TRIBE OF CALIFORNIA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–872. MARIS DISTRIBUTING CO. *v.* ANHEUSER-BUSCH, INC. C. A. 11th Cir. Certiorari denied. Reported below: 302 F. 3d 1207.

No. 02–874. BRYAN COUNTY BOARD OF EQUALIZATION *v.* BRYAN COUNTY BOARD OF TAX ASSESSORS. Ct. App Ga. Certiorari denied. Reported below: 253 Ga. App. 831, 560 S. E. 2d 719.

No. 02–875. PERSIK *v.* COLORADO. Dist. Ct., Larimer County, Colo. Certiorari denied.

No. 02–882. ADVANTA CORP. ET AL. *v.* RISEMAN. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 761.

No. 02–886. MARTIN *v.* WALMER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 276 F. 3d 578.

No. 02–887. ALABAMA-WEST FLORIDA ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH *v.* CARNESI; and

No. 02–906. FERRY PASS UNITED METHODIST CHURCH *v.* CARNESI ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 826 So. 2d 954.

No. 02–890. CLARK COUNTY SCHOOL DISTRICT ET AL. *v.* EASON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 303 F. 3d 1137.

No. 02–892. BENNETT *v.* ALLFIRST BANK, FKA FIRST NATIONAL BANK OF MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 144 Md. App. 752.

No. 02–898. FIESEL *v.* CHERRY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 294 F. 3d 664.

No. 02–899. FRIDLEY ET UX. *v.* HORRIGS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 291 F. 3d 867.

No. 02–903. GRYL ET AL., FOR THE BENEFIT OF SHIRE PHARMACEUTICALS GROUP PLC *v.* SHIRE PHARMACEUTICALS GROUP PLC ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 298 F. 3d 136.

No. 02–904. FLEMING & ASSOCIATES, L. L. P., ET AL. *v.* FASTOW ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 295.

No. 02–905. GENERAL COMMITTEES OF ADJUSTMENT GO–386 AND GO–245 OF THE UNITED TRANSPORTATION UNION ET AL. *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 295 F. 3d 1337.

No. 02–909. THREE O REALTY LLC *v.* NEW YORK STATE URBAN DEVELOPMENT CORPORATION, DBA EMPIRE STATE DEVELOPMENT CORPORATION, ET AL.; and

No. 02–910. WEST 41ST STREET REALTY LLC ET AL. *v.* NEW YORK STATE URBAN DEVELOPMENT CORPORATION, DBA EMPIRE STATE DEVELOPMENT CORPORATION, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 298 App. Div. 2d 1, 744 N. Y. S. 2d 121.

No. 02–911. POLO RALPH LAUREN CORP. ET AL. *v.* BELEKIS ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–916. LITOWITZ *v.* LITOWITZ. Sup. Ct. Wash. Certiorari denied. Reported below: 146 Wash. 2d 514, 48 P. 3d 261 and 53 P. 3d 516.

No. 02–917. COLEMAN ET AL. *v.* AMERICAN TYPE CULTURE COLLECTION, INC. Sup. Ct. Tex. Certiorari denied. Reported below: 83 S. W. 3d 801.

No. 02–919. DESSASAU, AKA GREEN *v.* COOK, DIRECTOR, AGENCY FOR HEALTH CARE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 289.

No. 02–920. MOORE *v.* LOCAL UNION NO. 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 486.

No. 02–921. BROWN *v.* ASENCIO ET AL. Sup. Ct. Va. Certiorari denied.

No. 02–927. EDWARDS ET AL. *v.* UNITED STATES;
No. 02–955. JOHNSON *v.* UNITED STATES; and
No. 02–8163. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 303 F. 3d 606.

No. 02–928. SCOTT *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 302 F. 3d 598.

No. 02–929. NOBLE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–933. WILKINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 02–934. WILSON *v.* MANPOWER INTERNATIONAL, INC. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 288.

No. 02–935. A WOMAN'S CHOICE-EAST SIDE WOMEN'S CLINIC ET AL. *v.* BRIZZI, PROSECUTING ATTORNEY FOR MARION COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 305 F. 3d 684.

No. 02–937. COX *v.* MILLER, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 296 F. 3d 89.

No. 02–940. MADDOX *v.* AMERICAN AIRLINES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 298 F. 3d 694.

No. 02–941. ROSS *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 200.

No. 02–943. TIMBERS *v.* CONNECTICUT STATEWIDE GRIEVANCE COMMITTEE. App. Ct. Conn. Certiorari denied. Reported below: 70 Conn. App. 1, 796 A. 2d 565.

No. 02–945. PHILADELPHIA NEWSPAPERS, INC. *v.* NEW JERSEY ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 173 N. J. 193, 801 A. 2d 255.

No. 02–949. Robles Morejon *v.* Goethals, Director of Community Supervision and Corrections, Department of Dallas County, Texas. C. A. 5th Cir. Certiorari denied.

No. 02–957. Williams *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–958. Uwaydah *v.* Van Wert County Hospital et al. C. A. 6th Cir. Certiorari denied.

No. 02–959. Watson *v.* Lithonia Lighting, dba Hi-Tek Group, et al. C. A. 7th Cir. Certiorari denied. Reported below: 304 F. 3d 749.

No. 02–962. Morris *v.* Crawford County, Arkansas, et al. C. A. 8th Cir. Certiorari denied. Reported below: 299 F. 3d 919.

No. 02–963. Alamo Title Insurance of Texas et al. *v.* Lisanti et ux. Sup. Ct. N. M. Certiorari denied. Reported below: 132 N. M. 750, 55 P. 3d 962.

No. 02–967. Perez *v.* Miami-Dade County, Florida. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1255.

No. 02–969. Konop *v.* Hawaiian Airlines, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 302 F. 3d 868.

No. 02–973. Lowerison *v.* San Diego County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 720.

No. 02–975. Drake *v.* Federal Aviation Administration. C. A. D. C. Cir. Certiorari denied. Reported below: 291 F. 3d 59.

No. 02–984. Patton *v.* Lemoine et al. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 226.

No. 02–986. Smith et al. *v.* Oregon. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 565.

No. 02–998. Carmona *v.* O'Neill, Secretary of the Treasury. C. A. D. C. Cir. Certiorari denied.

No. 02–999. Powers et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 10.

No. 02–1000. PESSINA *v.* ROSSON ET AL. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 77 S. W. 3d 293.

No. 02–1003. EAST FORD, INC. *v.* TAYLOR. Sup. Ct. Miss. Certiorari denied. Reported below: 826 So. 2d 709.

No. 02–1012. SINGH ET AL. *v.* BHATTI ET AL. Ct. App. Ohio, Butler County. Certiorari denied. Reported below: 148 Ohio App. 3d 386, 773 N. E. 2d 605.

No. 02–1018. WILSON *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 777.

No. 02–1024. CUNNINGHAM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 332 Ill. App. 3d 233, 773 N. E. 2d 682.

No. 02–1030. SHAW *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 370 Md. 648, 805 A. 2d 1086.

No. 02–1041. GOLDING *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 47 Fed. Appx. 939.

No. 02–1043. BOARD OF TRUSTEES OF MANHATTAN BEACH UNIFIED SCHOOL DISTRICT ET AL. *v.* PORTER, BY AND THROUGH HIS GUARDIAN AD LITEM, PORTER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 307 F. 3d 1064.

No. 02–1047. EDLUND *v.* BOB RYAN MOTORS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 669.

No. 02–1059. FRIDMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 9.

No. 02–1075. MCKINNEY ET UX. *v.* IRVING INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 309 F. 3d 308.

No. 02–1087. LI-LAN TSAI *v.* ROCKEFELLER UNIVERSITY. C. A. 2d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 657.

No. 02–1095. PRINCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 649.

No. 02–5551. GARCIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 57 S. W. 3d 436.

No. 02–5552. MCCARRIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 29 Fed. Appx. 831.

No. 02–5802. WHITNEY *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 280 F. 3d 240.

No. 02–6247. RIEMERS *v.* PETERS-RIEMERS. Sup. Ct. N. D. Certiorari denied. Reported below: 644 N. W. 2d 197.

No. 02–6628. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–6782. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 1321.

No. 02–6839. GULLEDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–7117. FERGUSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 917.

No. 02–7157. VAUGHN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–7198. WILLOUGHBY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 28 and 41 Fed. Appx. 602.

No. 02–7203. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–7346. LAMBROS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 316.

No. 02–7352. STANDARD *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 351 S. C. 199, 569 S. E. 2d 325.

No. 02–7380. COBB *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 85 S. W. 3d 258.

No. 02–7459. SUMLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 294 F. 3d 579.

No. 02–7462. REID ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 31 Fed. Appx. 564.

No. 02–7502. SAMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–7563. HARLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 Fed. Appx. 789.

No. 02–7607. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 285 F. 3d 664.

No. 02–7638. FLOYD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 156, 42 P. 3d 249.

No. 02–7639. FUNCHESS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–7646. JAMISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 299 F. 3d 114.

No. 02–7699. BEVARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 748.

No. 02–7726. SANDOVAL *v.* FREEMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–7727. FIELDS *v.* PRYOR, ATTORNEY GENERAL OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 02–7728. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 829 So. 2d 286.

No. 02–7730. CARPINO *v.* CRAWFORD, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7737. BOYD *v.* BASKERVILLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 681.

No. 02–7740. JANECKA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 301 F. 3d 316.

No. 02–7745. JACKSON *v.* BELLSOUTH TELECOMMUNICATIONS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 88.

No. 02–7748. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–7755. CARTER *v.* FARMERS RICE MILLING CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 704.

No. 02–7757. GIBBS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 821 So. 2d 295.

No. 02–7759. HERNANDEZ *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 513, 50 P. 3d 1100.

No. 02–7763. SANCHEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7767. ROSALES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–7774. MALLET *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7776. LANGWORTHY *v.* LUDWICK. C. A. 6th Cir. Certiorari denied.

No. 02–7777. JONES *v.* BRILEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 623.

No. 02–7779. HAYDEN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 96 Ohio St. 3d 211, 773 N. E. 2d 502.

No. 02–7783. TAYLOR *v.* KAYLO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7788. NOWAK *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 257.

No. 02–7792. HERRERA *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 301 F. 3d 1192.

No. 02–7799. PRYOR *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7806. ESPINOZA PENA *v.* BROYLES ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7807. BUCHANAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 110 Wash. App. 1031.

No. 02–7808. RICH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7812. RICE *v.* DOVE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 834.

No. 02–7814. ALTHOUSE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7815. BROWER *v.* SUPREME COURT OF MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 103.

No. 02–7818. BROSKY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7820. HAGER *v.* FLANIGAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 630.

No. 02–7824. MARTINEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–7825. JONES *v.* WALLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7827. WADE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 929.

No. 02–7829. BRANCH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–7832. DOUGLAS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 274 Kan. 96, 49 P. 3d 446.

No. 02–7834. TORRES *v.* SCHAEFER ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–7839. COVINGTON *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–7842. CARSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–7845. DUHART *v.* PETROVSKY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7846. CROOM *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 837 So. 2d 893.

No. 02–7847. DOUGLAS *v.* HODGES, SUPERINTENDENT, GOWANDA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–7848. N'JAI *v.* PITTSBURGH BOARD OF PUBLIC EDUCATION ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 799 A. 2d 995.

No. 02–7851. MCQUEEN *v.* EQUINOX INTERNATIONAL CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 555.

No. 02–7852. STEVENS *v.* MORGAN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–7857. COKER *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7860. CASH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 28 Cal. 4th 703, 50 P. 3d 332.

No. 02–7862. CLARKE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 02–7872. TOWNSEND *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 646 N. W. 2d 218.

No. 02–7874. MILLER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 326.

No. 02–7875. ALEXANDER *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 770.

No. 02–7880. PETERSON *v.* SEAMEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 25 Fed. Appx. 67.

No. 02–7901. POINTER *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–7903. MONTALVO *v.* HERRERA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7904. AZEEZ *v.* ROBERTSON ET AL. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 02–7905. BLACKBURN *v.* MISSOURI BOARD OF PROBATION AND PAROLE. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 83 S. W. 3d 585.

No. 02–7907. NETTLES *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–7908. BAKER *v.* TOLEDO CITY SCHOOL DISTRICT BOARD OF EDUCATION. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 02–7914. DOYLE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–7915. DURAN ESPINOZA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 02–7920. MILLER *v.* DEMARINO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 292.

No. 02–7923. PARTIN *v.* YOUNG ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 85.

No. 02–7927. WATANABE *v.* LOYOLA UNIVERSITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–7929. TAYLOR *v.* BOOKS-A-MILLION, INC. C. A. 5th Cir. Certiorari denied. Reported below: 296 F. 3d 376.

No. 02–7930. SINGLETON *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 02–7938. SEMENECK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–7939. ALTHOUSE *v.* HAMLIN, CLERK, DISTRICT COURT OF TEXAS, DALLAS COUNTY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–7940. O'CONNOR *v.* AAMCO/CINNAT, INC. C. A. 1st Cir. Certiorari denied.

No. 02–7941. NEWMAN *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 02–7945. FUENTES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 290 App. Div. 2d 563, 737 N. Y. S. 2d 106.

No. 02–7949. BINION *v.* CHANDLER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 484.

No. 02–7950. GARDNER *v.* CONTINUING DEVELOPMENTAL SERVICES, INC. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 292 App. Div. 2d 838, 739 N. Y. S. 2d 302.

No. 02–7951. RADIVOJEVIC *v.* DALEY, MAYOR OF THE CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–7952. NEUMAN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7953. SMITH *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 797 So. 2d 193.

No. 02–7954. BLASHFORD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 826 So. 2d 315.

No. 02–7957. WILKES *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 02–7958. WALTON *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–7959. TURNER *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–7960. THOMAS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–7964. DEVEAUX *v.* LOUVIERE, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–7967. ATANASOFF *v.* VELEZ ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–7968. HILL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 264 Va. 315, 568 S. E. 2d 673.

No. 02–7969. LEGRANDE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Stanly County, N. C. Certiorari denied.

No. 02–7971. SHELDON *v.* HOLDER, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 659.

No. 02–7977. MARTIN *v.* UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. C. A. 8th Cir. Certiorari denied.

No. 02–7978. LALOR *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 249 Wis. 2d 491, 639 N. W. 2d 225.

No. 02–7982. TAYLOR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7983. WYNN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–7984. THOMAS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–7985. PLESS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 255 Ga. App. 95, 564 S. E. 2d 508.

No. 02–7986. MORENO *v.* METHODIST HOSPITAL. C. A. 7th Cir. Certiorari denied.

No. 02–7988. AL-AMIN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 835.

No. 02–7989. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–7992. OUSLEY *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 323.

No. 02–7994. PERDUE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 82 S. W. 3d 909.

No. 02–8000. CONRAD *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 116.

No. 02–8002. CUMMINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 356 N. C. 169, 568 S. E. 2d 622.

No. 02–8003. ARVILLE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–8005. SMITHERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 826 So. 2d 916.

No. 02–8007. WILLIAMS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 800 So. 2d 819.

No. 02–8008. SHELTON *v.* PALMATEER, SUPERINTENDENT, COFFEE CREEK CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied.

No. 02–8009. NETTLES *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 02–8016. BEAVERS *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 288.

No. 02–8019. BELLE *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–8021. FORTSON *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 959.

No. 02–8023. STEARMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8025. STERLING *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 289.

No. 02–8026. REYNOLDS *v.* MICHIGAN PAROLE BOARD. C. A. 6th Cir. Certiorari denied.

No. 02–8028. WEARING *v.* BOVIS LEND LEASE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 609.

No. 02–8029. WILLIAMS *v.* LAMBERT, ADMINISTRATOR, FLORENCE COUNTY DETENTION CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 871.

No. 02–8030. JENNINGS *v.* BALLARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–8032. MORGAN, AKA MORRIS *v.* FAIRMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–8034. BUTCHER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–8037. BREEDLOVE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 279 F. 3d 952.

No. 02–8038. RAMOS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–8039. WUEBBELS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 02–8040. LAPOINTE *v.* CHRANS, WARDEN. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 329 Ill. App. 3d 1080, 770 N. E. 2d 701.

No. 02–8042. DAUGHTERY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–8045. QUINTANA *v.* ATHERTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 283.

No. 02–8047. NELSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–8048. TOWNSEND, AKA BROWN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8049. WAGNER *v.* CALIFORNIA DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 998.

No. 02–8050. JACKSON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–8051. JOHNSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8053. TIPTON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 02–8054. WILSON *v.* GONZALEZ, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–8056. TURNBOE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 02–8057. GORDON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8058. HART *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 02–8061. FIELDS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 323, 772 N. E. 2d 742.

No. 02–8062. HINDS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 437 Mass. 54, 768 N. E. 2d 1067.

No. 02–8063. GEARLDS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8072. FISHER *v.* HUTSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 742.

No. 02–8073. GIDDENS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8075. SAWYER *v.* POWELL, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Certiorari denied.

No. 02–8077. HUTCHINSON *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 02–8078. HOLDEN *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 662.

No. 02–8079. FULTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 387.

No. 02–8080. GOLDSTEIN *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–8081. HOWARD *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–8082. HIBBERT *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–8083. MARTIN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 02–8084. JOHNSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8087. SMITH *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 88 S. W. 3d 652.

No. 02–8088. REFILE *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 685.

No. 02–8089. SUMMERFIELD *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–8091. GARZA *v.* KENNEY, WARDEN. Sup. Ct. Neb. Certiorari denied. Reported below: 264 Neb. 146, 646 N. W. 2d 579.

No. 02–8092. HOPKINS *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 893.

No. 02–8093. HUGHES *v.* DAY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–8094. HERNANDEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–8098. TIGNER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8099. BAKER *v.* CEPAK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 660.

No. 02–8103. REAZOR *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied.

No. 02–8106. PACK *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–8108. JOHNSON *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 71 Conn. App. 272, 801 A. 2d 890.

No. 02–8115. SAMPSON *v.* MAYNOR, SHERIFF, ROBESON COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 185.

No. 02–8118. KORNAFEL *v.* REPETTO. Super. Ct. Pa. Certiorari denied. Reported below: 797 A. 2d 1030.

No. 02–8121. KILLORAN *v.* KILLORAN. Super. Ct. Richmond County, Ga. Certiorari denied.

No. 02–8122. NOBLES *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–8124. ROOS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–8125. MEEKER *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 871.

No. 02–8126. BARNES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8130. OLSEN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 384.

No. 02–8131. BOCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 312 F. 3d 829.

No. 02–8132. JONES *v.* PUGH, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 217.

No. 02–8133. AYALA-AYALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 489.

No. 02–8134. BROOKS *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–8135. ARENAS-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 536.

No. 02–8136. COLLIER *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 843.

No. 02–8137. DANOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 941.

No. 02–8138. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 306 F. 3d 398.

No. 02–8139. CERVANTES-LLAMAS, AKA CARRASO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 539.

No. 02–8140. LEWIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8141. KEELEN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 406.

No. 02–8143. ZARATE-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 575.

No. 02–8144. TINLIN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8146. THOMAS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 02–8147. WINTER *v.* DEPARTMENT OF AGRICULTURE. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 580.

No. 02–8148. WISE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 02–8149. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 299 F. 3d 84.

No. 02–8151. MERRITT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8152. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 710.

No. 02–8153. CYPRIEN *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 324.

No. 02–8154. DIOMBERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 706.

No. 02–8155. CONWELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8156. CRUZ-SAUCEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 482.

No. 02–8158. CAMPBELL *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 02–8159. CONKLE *v.* POTTER, POSTMASTER GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 950.

No. 02–8160. MCKIEARNAN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 02–8162. STEVENS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 827 So. 2d 999.

No. 02–8164. WEAVER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 812 So. 2d 413.

No. 02–8165. PEREZ-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 110.

No. 02–8166. QUINTANA *v.* ATHERTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 283.

No. 02–8169. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–8170. WHITE *v.* CARTER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 312.

No. 02–8171. BECERRA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 482.

No. 02–8172. LUIS-ARIAS, AKA ARIAS, AKA DIONICIO-GALVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 925.

No. 02–8173. BARRERA-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 557.

No. 02–8174. BRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 221.

No. 02–8175. BEYER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 247 Wis. 2d 13, 633 N. W. 2d 627.

No. 02–8178. PARKS *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–8179. BRUTON *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 48 Fed. Appx. 336.

No. 02–8180. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8181. MEZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 577.

No. 02–8184. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–8185. GARBORCAUSKAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–8187. COLBERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 225.

No. 02–8188. COFFIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8189. CHAMPION *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8190. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 575.

No. 02–8191. GODOSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 304 F. 3d 761.

No. 02–8193. REYES-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 577.

No. 02–8194. REED *v.* YUMA COUNTY, ARIZONA, ET AL. Ct. App. Ariz. Certiorari denied.

No. 02–8195. SIERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 498.

No. 02–8196. REED *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 02–8197. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 327.

No. 02–8199. ODMAN, AKA ODDMAN, AKA LLEWELYN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 221.

No. 02–8200. MITCHELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8201. LESLIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 699.

No. 02–8202. KOVACHEVICH *v.* NEW YORK CITY HOUSING AUTHORITY. Ct. App. N. Y. Certiorari denied. Reported below: 98 N. Y. 2d 692, 775 N. E. 2d 1289.

No. 02–8209. BOWMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–8210. BARNETT *v.* CLARK, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 492.

No. 02–8211. BUSTILLO *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 396.

No. 02–8215. HOYT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 834.

No. 02–8216. ROMAN-GUTIERREZ, AKA GUZMAN-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 518.

No. 02–8218. HOLLINGSWORTH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 298 F. 3d 700.

No. 02–8219. FORBES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8220. FAULKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 47 Fed. Appx. 633.

No. 02–8221. JAIMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 220.

No. 02–8225. ROOKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–8226. ROCHA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 481.

No. 02–8227. MCDONALD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 490.

No. 02–8229. MCKINNEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–8230. POE-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 502.

No. 02–8231. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 491.

No. 02–8232. PARRISH, AKA PARISH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 798.

No. 02–8233. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–8234. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 297 F. 3d 760.

No. 02–8235. ESPINOSA-OSSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 482.

No. 02–8236. MATTHEWS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8237. LAWRENCE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8238. ROSS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 02–8240. RAMOS *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 303 F. 3d 934.

No. 02–8241. STONE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 850.

No. 02–8242. SPICER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 483.

No. 02–8243. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8245. COOK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 483.

No. 02–8246. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 654.

No. 02–8247. CERNA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–8249. CAMPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 70.

No. 02–8256. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 402.

No. 02–8258. CARLESS *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 02–8259. COLEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–8260. EVANS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8261. DEFEO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 921.

No. 02–8262. BIRDSALL *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 02–8264. ALLEN *v.* YARBOROUGH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 305 F. 3d 1046.

No. 02–8265. BATES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 477.

No. 02–8266. AYON-ASTORGA, AKA LOPEZ-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 473.

No. 02–8268. DELLINGER *v.* BOWEN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 758.

No. 02–8269. TREVINO *v.* TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 02–8270. YANEZ-SAUCEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 295 F. 3d 991.

No. 02–8271. WALKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8276. COLLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–8277. CARRILLO *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 32 Fed. Appx. 899.

No. 02–8278. COLTER *v.* OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 757.

No. 02–8281. MACKAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 713.

No. 02–8282. LUKER *v.* RODERICK. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 02–8283. VILLARINO-PACHECO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 959.

No. 02–8292. DRABOVSKIY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–8294. DAVISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–8296. DIXON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 02–8298. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 487.

No. 02–8299. FORTSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 740.

No. 02–8302. HARDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 499.

No. 02–8303. HOLDREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 209.

No. 02–8304. PARRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 02–8305. BECKER *v.* MONTGOMERY, ATTORNEY GENERAL OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 914.

No. 02–8306. ANDREWS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 02–8308. BASS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–8310. BRAGGS *v.* PEREZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 678.

No. 02–8311. BEATTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 453.

No. 02–8315. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 519.

No. 02–8316. BARBER *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 404.

No. 02–8317. BRUNETTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–8319. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 732.

No. 02–8322. DELGADO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8323. LYN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 493.

No. 02–8324. JETER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 813 A. 2d 1143.

No. 02–8325. WAY QUOE LONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 301 F. 3d 1095.

No. 02–8326. LIVINGSTON *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–8327. JACOBS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 02–8329. ALBERTO CABAL *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 929.

No. 02–8330. CASTELLANOS-LOZA, AKA LOZA-CASTELLANOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 263.

No. 02–8331. DEVINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 249.

No. 02–8332. CHAVEZ-MIRANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 306 F. 3d 973.

No. 02–8333. CARLSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8334. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 181.

No. 02–8336. DUNN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–8337. DEHANEY *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 261 Conn. 336, 803 A. 2d 267.

No. 02–8339. WILT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 937.

No. 02–8341. ROSARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 12.

No. 02–8342. STREETER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 146 N. C. App. 594, 553 S. E. 2d 240.

No. 02–8344. FERRELL, AKA RANGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 491.

No. 02–8345. HERSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1233.

No. 02–8346. INDA-PARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 805.

No. 02–8347. HANKEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 626.

No. 02–8348. IRRA-ONTIVEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 751.

No. 02–8349. FOSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 750.

No. 02–8356. MAZE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 959.

No. 02–8357. LEWIS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 151 N. C. App. 600.

No. 02–8359. HADDAD *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 6th Cir. Certiorari denied.

No. 02–8363. SHEWMAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 321.

No. 02–8364. SCHAUERMAN *v.* NEET, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 850.

No. 02–8365. CHAMBERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 276.

No. 02–8368. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8370. CEMINCHUK *v.* OLSON, SOLICITOR GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 02–8372. KRUG *v.* KRUG. Ct. App. Wis. Certiorari denied. Reported below: 256 Wis. 2d 692, 647 N. W. 2d 467.

No. 02–8373. BURGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 227.

No. 02–8374. GONZALEZ-CASILLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 120.

No. 02–8375. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 455.

No. 02–8378. TRACY *v.* OLSON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–8379. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8380. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 483.

No. 02–8382. TOLBERT *v.* UNITED STATES STEEL CORP. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8384. FULCHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–8385. FRANKLIN *v.* HENSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 796.

No. 02–8387. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 86.

No. 02–8388. WELLONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 328.

No. 02–8389. WILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 542.

No. 02–8392. DOSS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8396. CEJA-CISNEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 132.

No. 02–8399. DENSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 485.

No. 02–8406. CREWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 28 Fed. Appx. 247.

No. 02–8413. COLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 215.

No. 02–8414. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 706.

No. 02–8416. CHRISTENBURY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 02–8418. COLLIER *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–8420. FRANCO RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 928.

No. 02–8423. CALVERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 634.

No. 02–8429. KYLES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8431. PADILLA-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 929.

No. 02–8434. AGUILAR GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 636.

No. 02–8438. HAZEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 182.

No. 02–8443. GRIGGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–8447. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 487.

No. 02–8450. WILLIAMS *v.* CHICK-FIL-A. C. A. 11th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 501.

No. 02–8452. DIFRISCO *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 174 N. J. 195, 804 A. 2d 507.

No. 02–8455. DAVIDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 929.

No. 02–8458. PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 482.

No. 02–8459. MENA-JARAMILLO, AKA LEAL-LARIOS, AKA ARERE-LIANO, AKA MENA *v.* UNITED STATES; ESCOBAR-ESPINOZA *v.* UNITED STATES; MIRANDA-AVALOS *v.* UNITED STATES; RUIZ-TORRES, AKA PICHARDO BARRERA *v.* UNITED STATES; TRUJILLO-HERNANDEZ *v.* UNITED STATES; and TRUJILLO-MORENO, AKA LARA-VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–8463. DEVALLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8464. PULLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 678.

No. 02–8466. HOOPINGARNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 486.

No. 02–8468. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 410.

No. 02–8469. HODGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 133.

No. 02–8471. KNIGHT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 215.

No. 02–8476. SUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 307 F. 3d 1150.

No. 02–8478. SERNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 309 F. 3d 859.

No. 02–8479. MORE *v.* J. B. HUNT TRANSPORTATION, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–8480. BROWN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8481. SALINAS RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 103.

No. 02–8485. DEGLACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8488. BAEZ-BERMUDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–8489. AJETUNMOBI *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 72.

No. 02–8490. TATE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8491. AYALA-SANABRIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 919.

No. 02–8495. ROGERS *v.* CASTERLINE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 410.

No. 02–8496. REPLOGLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 301 F. 3d 937.

No. 02–8499. FRANCOIS, AKA ISENADIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 490.

No. 02–8500. PERKINS *v.* HEDRICK, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–8502. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 418.

No. 02–8504. ARMANDO MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8509. BELLE *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 111.

No. 02–8511. LOFTIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 944.

No. 02–8515. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 322.

No. 02–8517. VUKADINOVICH *v.* BOARD OF SCHOOL TRUSTEES OF NORTH NEWTON SCHOOL CORPORATION ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–8518. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–8519. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 287.

No. 02–8520. RUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 684.

No. 02–8524. RICHMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–8526. CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 425.

No. 02–8527. HAMMER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 327.

No. 02–8528. GODOY-AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 628.

No. 02–8531. VAZQUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 550.

No. 02–8540. BERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 251.

No. 02–8542. HERMANEK ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 F. 3d 1076 and 47 Fed. Appx. 439.

No. 02–8543. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 486.

No. 02–8544. LABARGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 216.

No. 02–8547. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8548. TUCKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 305 F. 3d 1193.

No. 02–8551. CHEESE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 257.

No. 02–8553. CARTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 807.

No. 02–8554. CORREA, AKA ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 740.

No. 02–8555. OLIVAS-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 977.

No. 02–8556. INGRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 216.

No. 02–8557. SARNO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 603.

No. 02–8561. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 314 F. 3d 1216.

No. 02–8568. GOLDMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–8573. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 930.

No. 02–8575. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 932.

No. 02–8576. JANSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–8578. GARCIA-BENAVIDES, AKA BENAVIDES-MURIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 686.

No. 02–8582. FELDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 164.

No. 02–8583. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407.

No. 02–8585. CHERNABAEFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 519.

No. 02–8586. CORTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 299 F. 3d 1030.

No. 02–8587. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 309 F. 3d 928.

No. 02–8588. ESCARREGA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–8589. COLLINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 99.

No. 02–8590. DESIR ET AL. *v.* HALL, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER, ET AL. C. A. 1st Cir. Certiorari denied.

No. 02–8591. DE LA ROSA-AGUNDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 633.

No. 02–8593. MANNING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 02–8594. MORISSETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 49 Fed. Appx. 334.

No. 02–8595. VALDOVINOS-SOLOACHE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 309 F. 3d 91.

No. 02–8596. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 40 Fed. Appx. 669.

No. 02–8597. RUIZ-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 699.

No. 02–8599. SAMUELS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 308 F. 3d 662.

No. 02–8602. MITCHELL, AKA HENDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8606. WATKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 838.

No. 02–8610. MOREHEAD *v.* RYAN, ACTING DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 817.

No. 02–8611. LOGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 616.

No. 02–8612. MAJOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8616. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8621. BAREFIELD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 497.

No. 02–8622. BRAWNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 327.

No. 02–8638. BUCHANAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–8643. MONTEIRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–8646. GREGG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8647. HYMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 618.

No. 02–8648. GRIFFITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 301 F. 3d 880.

No. 02–8656. SWINDLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–466. CASINO ASSOCIATION OF LOUISIANA ET AL. *v.* LOUISIANA ET AL. Sup. Ct. La. Motion of DKT Liberty Project for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 820 So. 2d 494.

No. 02–711. MOORE ET AL. *v.* DETROIT SCHOOL REFORM BOARD ET AL. C. A. 6th Cir. Motion of Rosa L. Parks et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 293 F. 3d 352.

No. 02–829. DISCOVER BANK *v.* SZETELA. Ct. App. Cal., 4th App. Dist. Motion of American Bankers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 97 Cal. App. 4th 1094, 118 Cal. Rptr. 2d 862.

No. 02–839. BRITTING *v.* MOTOROLA, INC., ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition.

No. 02–852. CLAY *v.* PROCTER & GAMBLE PAPER PRODUCTS CO. ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 245 F. 3d 795.

No. 02–893. EUBANKS-JACKSON *v.* BANK OF AMERICA, N. A. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 39 Fed. Appx. 459.

No. 02–7769. KOLODY *v.* SIMON MARKETING, INC., ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–8055. WOODARD *v.* STANLEY, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 02–8533. AILEMEN, AKA POPOOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 43 Fed. Appx. 77.

No. 02–926. MINUS *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no

part in the consideration or decision of this petition. Reported below: 42 Fed. Appx. 631.

No. 02–946. BOARD OF EDUCATION OF THE PAWLING CENTRAL SCHOOL DISTRICT *v.* SCHUTZ ET AL. C. A. 2d Cir. Motion of New York State School Boards Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 290 F. 3d 476.

No. 02–947. UNITED AIRLINES, INC., ET AL. *v.* HOSAKA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE AND HEIRS OF HOSAKA, ET AL. C. A. 9th Cir. Motion of Air Transport Association of America, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 305 F. 3d 989.

No. 02–961. PASCHAL ET UX. *v.* FLAGSTAR BANK, FSB (two judgments). C. A. 6th Cir. Motion of Fair Housing Center of Metropolitan Detroit for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 295 F. 3d 565 (first judgment); 297 F. 3d 431 (second judgment).

No. 02–7809. BRIDGEWATER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. JUSTICE SOUTER and JUSTICE BREYER would grant certiorari. Reported below: 823 So. 2d 877.

No. 02–8101. JONES *v.* PITCHER, WARDEN. C. A. 6th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 42 Fed. Appx. 811.

Rehearing Denied

No. 01–1756. SWINDELL *v.* FLORIDA EAST COAST RAILWAY CO., *ante*, p. 820;

No. 01–5344. REYES *v.* UNITED STATES, 534 U. S. 917;

No. 01–9094. ABDUR'RAHMAN *v.* BELL, WARDEN, *ante*, p. 88;

No. 01–9994. LYON *v.* TEXAS, *ante*, p. 1044;

No. 01–10260. EARL *v.* HOWES, WARDEN, *ante*, p. 839;

No. 01–10273. TIJERINA *v.* UTAH BOARD OF PARDONS ET AL., *ante*, p. 839;

No. 01–10586. LOPEZ *v.* SECRETARY OF THE NAVY ET AL., *ante*, p. 851;

No. 01–10613. STILL *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 853;

No. 01–10691. ESPINOZA PENA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 857;

No. 01–11015. EVANS *v.* CITY OF KINGSVILLE, TEXAS, *ante*, p. 1028;

No. 02–551. PRIMM *v.* COUNTRY COS., *ante*, p. 1072;

No. 02–647. BANKS *v.* JEFFERSON-SMURFIT, *ante*, p. 1072;

No. 02–667. YORK *v.* ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ET AL., *ante*, p. 1089;

No. 02–5060. BARBOSA *v.* UNITED STATES, *ante*, p. 1049;

No. 02–5980. DAHLER *v.* MICHIGAN, *ante*, p. 979;

No. 02–6129. PEARSON *v.* FINN ET AL., *ante*, p. 1006;

No. 02–6225. WATSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1008;

No. 02–6229. REDDEN *v.* GALLEY, WARDEN, ET AL., *ante*, p. 1032;

No. 02–6297. REDDEN *v.* MADES ET AL., *ante*, p. 1032;

No. 02–6508. TURNER *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL., *ante*, p. 1073;

No. 02–6573. SALES *v.* MISSOURI, *ante*, p. 1052;

No. 02–6634. STRINGER *v.* AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA ET AL., *ante*, p. 1053;

No. 02–6761. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1074;

No. 02–6762. ALTVATER *v.* SUPREME COURT OF NEW YORK ET AL., *ante*, p. 1074;

No. 02–6803. IN RE TURNER, *ante*, p. 1070;

No. 02–6832. IN RE HARRIS, *ante*, p. 999;

No. 02–6858. ARMSTRONG *v.* COBB COUNTY WATER SYSTEM, *ante*, p. 1091;

No. 02–6899. IN RE MIKKO, *ante*, p. 1017;

No. 02–7052. WOODFIN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 1061;

No. 02–7137. DIPIETRO *v.* UNITED STATES, *ante*, p. 1064;

No. 02–7351. PELCHAT *v.* UNITED STATES, *ante*, p. 1094;

No. 02–7411. WHITFIELD *v.* ANDERSON, WARDEN, *ante*, p. 1096;

No. 02–7429. FRANKLIN *v.* FLORIDA ET AL., *ante*, p. 1096;
No. 02–7539. IN RE WILKINS, *ante*, p. 1087; and
No. 02–7577. EVANS *v.* KINGSVILLE INDEPENDENT SCHOOL DISTRICT, *ante*, p. 1165. Petitions for rehearing denied.

No. 00–1316. RODRIGUEZ DELGADO ET AL. *v.* SHELL OIL CO. ET AL., 532 U. S. 972;
No. 00–9978. JANNEH *v.* GRIFFEN ET AL., 534 U. S. 839; and
No. 01–1077. EVERETT *v.* UNITED STATES, 534 U. S. 1163. Motions for leave to file petitions for rehearing denied.

No. 02–646. MINNIECHESKE ET AL. *v.* SHAWANO COUNTY, WISCONSIN, *ante*, p. 1072. Motion of petitioner Donald Minniecheske for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

FEBRUARY 25, 2003

Miscellaneous Order

No. 02–9203 (02A713). IN RE WILLIAMS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 02–9165 (02A707). WILLIAMS *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 26, 2003

Vacated and Remanded After Certiorari Granted

No. 02–322. DEPARTMENT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. [Certiorari granted *sub nom. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms* v. *Chicago*, *ante*, p. 1018.] Judgment vacated, and case remanded to the Court of Appeals to consider what effect, if any, Div. J, Tit. 6, § 644, of the Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 473, has on this case.

Certiorari Denied

No. 02–9230 (02A720). KING *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 28, 2003

Miscellaneous Order

No. 02–5664. SELL *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante,* p. 999.] Counsel should be prepared to discuss the jurisdiction of this Court and of the Court of Appeals in this case, see *Cohen* v. *Beneficial Industrial Loan Corp.,* 337 U. S. 541 (1949), and are directed to file with the Clerk, and serve upon opposing counsel, supplemental briefs on the issue on or before 3 p.m., Friday, March 7, 2003. Twenty copies of the briefs prepared under this Court's Rule 33.2 may be filed initially in order to meet the March 7 filing date. Rule 29.2 does not apply. Forty copies of the briefs prepared under Rule 33.1 are to be filed as soon as possible thereafter.

MARCH 3, 2003

Certiorari Granted—Vacated and Remanded

No. 01–8639. COULTER *v.* ILLINOIS. App. Ct. Ill., 1st 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 *Miller-El* v. *Cockrell, ante,* p. 322. Reported below: 321 Ill. App. 3d 644, 748 N. E. 2d 240.

No. 02–782. WALLS, WARDEN *v.* HENDERSON. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Woodford* v. *Visciotti, ante,* p. 19. Reported below: 296 F. 3d 541.

Miscellaneous Orders

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for Interim Fees and Expenses granted, and the Special Master is awarded a total of $239,652.85 for the period October

16, 2000, through January 17, 2003, to be paid equally by the parties. [For earlier decision herein, see, *e. g.*, 533 U. S. 1.]

No. 01–1757. STOGNER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. [Certiorari granted, *ante*, p. 1043.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–102. LAWRENCE ET AL. *v.* TEXAS. Ct. App. Tex., 14th Dist. [Certiorari granted, *ante*, p. 1044.] Motion of Center for Marriage Law for leave to file a brief as *amicus curiae* granted.

No. 02–311. WIGGINS *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1027.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–428. DASTAR CORP. *v.* TWENTIETH CENTURY FOX FILM CORP. ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1099.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 02–479. MEDICAL BOARD OF CALIFORNIA *v.* HASON. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1028.] Motion of Lawrence C. Agee for leave to intervene denied.

No. 02–815. CITY OF SACRAMENTO, CALIFORNIA, ET AL. *v.* BARDEN ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 02–8965. IN RE SERIAN. Petition for writ of habeas corpus denied.

No. 02–1074. IN RE VEY. Petition for writ of mandamus and/or prohibition denied.

No. 02–8758. IN RE HOOK. Petition for writ of prohibition denied.

Certiorari Granted

No. 02–811. GROH *v.* RAMIREZ ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 298 F. 3d 1022.

Certiorari Denied

No. 01–1653. MASON, ON HER OWN BEHALF AND ON BEHALF OF THOSE SIMILARLY SITUATED *v.* HAMILTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 280 F. 3d 788.

No. 01–7293. PUCKETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 788 So. 2d 752.

No. 01–10305. STEVENS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 806 So. 2d 1031.

No. 02–787. PERNA *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 36 Fed. Appx. 61.

No. 02–801. PENNSYLVANIA DEPARTMENT OF CORRECTIONS *v.* KOSLOW ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 302 F. 3d 161.

No. 02–816. SADOUX *v.* WESTMORELAND. C. A. 5th Cir. Certiorari denied. Reported below: 299 F. 3d 462.

No. 02–817. STEAM PRESS HOLDINGS, INC., DBA YOUNG LAUNDRY AND DRY CLEANING, ET AL. *v.* HAWAII TEAMSTERS AND ALLIED WORKERS UNION, LOCAL 996, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 302 F. 3d 998.

No. 02–861. MCCLENDON *v.* CITY OF COLUMBIA, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 305 F. 3d 314.

No. 02–968. ALLAH *v.* CITY OF NEW YORK DEPARTMENT OF PARKS AND RECREATION. C. A. 2d Cir. Certiorari denied. Reported below: 47 Fed. Appx. 45.

No. 02–971. MCFARLING *v.* MONSANTO CO. C. A. Fed. Cir. Certiorari denied. Reported below: 302 F. 3d 1291.

No. 02–972. NEW RAILHEAD MANUFACTURING, L. L. C. *v.* VERMEER MANUFACTURING CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 298 F. 3d 1290.

No. 02–974. DOE, AS NEXT FRIEND OF DOE, A MINOR *v.* ROSEVILLE COMMUNITY SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 296 F. 3d 431.

No. 02–976. DURAND ET UX. *v.* ARIF ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–977. BRIDGESTONE CORP. *v.* T&T TRUCK & CRANE SERVICE, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 99 Cal. App. 4th 767, 121 Cal. Rptr. 2d 673.

No. 02–979. BROPHY *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Commw. Ct. Pa. Certiorari denied.

No. 02–981. DAMRON *v.* FOWLER. Ct. App. Ky. Certiorari denied.

No. 02–987. FURCAL-PEGUERO *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 255 Ga. App. 729, 566 S. E. 2d 320.

No. 02–988. HARTFORD INSURANCE COMPANY OF THE MIDWEST *v.* HUTH. C. A. 9th Cir. Certiorari denied. Reported below: 298 F. 3d 800.

No. 02–994. BISHOP *v.* HUNTER. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 482.

No. 02–1006. FRANCOIS *v.* PUTNAM INVESTMENTS, LLC. C. A. 1st Cir. Certiorari denied. Reported below: 34 Fed. Appx. 395.

No. 02–1010. LOBERG ET AL. *v.* HALLWOOD REALTY PARTNERS, L. P., ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 323 Ill. App. 3d 936, 753 N. E. 2d 1020.

No. 02–1011. KIFER *v.* FRIEBIS. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 699.

No. 02–1015. BERRAFATO *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA SALES PRACTICE LITIGATION. C. A. 3d Cir. Certiorari denied. Reported below: 47 Fed. Appx. 78.

No. 02–1056. BURT, BURT & RENTZ RETIREMENT PENSION TRUST ET AL. *v.* DOUGHERTY COUNTY TAX ASSESSORS. Ct. App. Ga. Certiorari denied. Reported below: 256 Ga. App. 648, 569 S. E. 2d 557.

No. 02–1063. BRADY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 914.

No. 02–1072. KOCH *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. Fed. Cir. Certiorari denied. Reported below: 48 Fed. Appx. 778.

No. 02–1077. HARDING *v.* HARDING. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 99 Cal. App. 4th 626, 121 Cal. Rptr. 2d 450.

No. 02–1083. KHAN *v.* WHITE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 849.

No. 02–1115. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 438.

No. 02–1119. YOUNG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–1148. BRECKENRIDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 739.

No. 02–7150. HUNT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 873.

No. 02–7182. JOHNSON *v.* SMART & FINAL STORES CORP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–7464. LANZOTTI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–7510. BANDY *v.* SPRINT MID-ATLANTIC TELECOM, INC. C. A. 4th Cir. Certiorari denied. Reported below: 40 Fed. Appx. 862.

No. 02–7635. CAHN *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 35 Fed. Appx. 356.

No. 02–7657. LEWIS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 225.

No. 02–7722. MINDOMBE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 795 A. 2d 39.

No. 02–7752. TARAMONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 740.

No. 02–7765. PEEPLES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 205 Ill. 2d 480, 793 N. E. 2d 641.

No. 02–8142. WILLIAMS *v.* ROY O. MARTIN LUMBER CO., L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 483.

No. 02–8176. STEELE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–8177. JACKSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–8183. SPRINKLE *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 801 So. 2d 1131.

No. 02–8186. CASSANO *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 96 Ohio St. 3d 94, 772 N. E. 2d 81.

No. 02–8192. RANKINE *v.* SERVER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 47 Fed. Appx. 199.

No. 02–8198. REED *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 02–8203. LADNER *v.* COURTESY IMPORTS, INC., ET AL. Sup. Ct. Nev. Certiorari denied.

No. 02–8204. LEWIS *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 02–8207. BUTLER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8208. ARMANT *v.* LENSING, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–8212. BRYSON ET AL. *v.* JOHNSTON, JUDGE, SUPERIOR COURT OF NORTH CAROLINA, MECKLENBURG COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 946.

No. 02–8222. MEEKS *v.* BELL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–8223. SHORT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–8224. RASHAD *v.* WALSH, SUPERINTENDENT, LEMUEL SHATTUCK HOSPITAL CORRECTIONAL UNIT. C. A. 1st Cir. Certiorari denied. Reported below: 300 F. 3d 27.

No. 02–8228. MOORE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 298 F. 3d 361.

No. 02–8239. JONES *v.* TEXAS BOARD OF CRIMINAL JUSTICE ET AL. C. A. 5th Cir. Certiorari denied.

No. 02–8244. CONWELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–8248. CARDOZA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–8250. COTHRON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 824 So. 2d 170.

No. 02–8251. HENDERSON *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 296 F. 3d 541.

No. 02–8253. HUNT *v.* LEE COUNTY SHERIFF ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–8254. ELLIS *v.* HARGETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 302 F. 3d 1182.

No. 02–8255. FLANDERS *v.* GRAVES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 299 F. 3d 974.

No. 02–8257. DELEON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8267. RIVERA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8272. DOPP *v.* DOPP (RUNYAN). Ct. Civ. App. Okla. Certiorari denied.

No. 02–8273. GARCIA *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 75 S. W. 3d 493.

No. 02–8274. DENT *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–8275. COOK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–8280. LEWIS ET AL. *v.* EMIGRANTS MORTGAGE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 38 Fed. Appx. 920.

No. 02–8291. COMMODORE *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 02–8321. DANDRIDGE *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–8328. DANIELS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 332 Ill. App. 3d 198, 773 N. E. 2d 119.

No. 02–8343. YELLEN *v.* MUELLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 877.

No. 02–8351. UKENI *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–8367. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 826 So. 2d 316.

No. 02–8377. THAMES *v.* HARKLEROAD, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 683.

No. 02–8411. BUSH *v.* TRENT, WARDEN. Cir. Ct. Ohio County, W. Va. Certiorari denied.

No. 02–8419. DREW *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1278.

No. 02–8421. RICHARDS ET UX. *v.* VALLEY PONTIAC-BUICK-GMC, INC. Ct. App. Wash. Certiorari denied.

No. 02–8445. TATAII *v.* YOSHINA. Sup. Ct. Haw. Certiorari denied.

No. 02–8449. BARNES *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 85 S. W. 3d 28.

No. 02–8483. EUFROSINA *v.* DEFENSE LOGISTICS AGENCY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 33 Fed. Appx. 647.

No. 02–8523. WILLIAMS *v.* MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 97.

No. 02–8532. HOPKINS, AKA JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 310 F. 3d 145.

No. 02–8536. ELLIOTT *v.* GEISE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 478.

No. 02–8600. ANTONIO QUEZADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 159.

No. 02–8605. WOLTERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 258.

No. 02–8608. WINKFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8614. MALIK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 621.

No. 02–8617. ORDUNO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 404.

No. 02–8618. CORRADO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 304 F. 3d 593.

No. 02–8620. BUTLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 296 F. 3d 721.

No. 02–8629. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 301 F. 3d 923.

No. 02–8649. FRANKLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8650. SWYGERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 191.

No. 02–8665. GRESHAM *v.* CHANDLER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 484.

No. 02–8669. LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 875.

No. 02–8670. LINDSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 404.

No. 02–8672. THREATS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 980.

No. 02–8673. RUBIO-GUIDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 342.

No. 02–8674. CAMPBELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 295 F. 3d 398.

No. 02–8675. WILLINGHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 310 F. 3d 367.

No. 02–8679. GADDIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 150.

No. 02–8684. CRAWFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 686.

No. 02–8685. CARLSEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–8689. MORENO-FLORES *v.* UNITED STATES; DOMINGUEZ-VILLARREAL *v.* UNITED STATES; HURTADO-HILARIO, AKA HERRERA-GARCIA *v.* UNITED STATES; IGLESIAS-VASQUEZ *v.* UNITED STATES; ARANDA-PEREZ *v.* UNITED STATES; TAPIA-TIBURCIO *v.* UNITED STATES; GIRON-NAVAS, AKA RAMIREZ, AKA MARTINEZ *v.* UNITED STATES; MALDONADO-RAMIREZ *v.* UNITED STATES; and VILLAREAL-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407 (second, third, and seventh judgments), 408 (first, fourth, fifth, sixth, and ninth judgments), and 409 (eighth judgment).

No. 02–8690. MEJIA-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 405.

No. 02–8692. LOPEZ-TREJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 591.

No. 02–8695. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 303 F. 3d 606.

No. 02–8696. LEONARD, AKA SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 949.

No. 02–8697. TORRES-HERNANDEZ *v.* UNITED STATES; and GONZALEZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407 (second judgment) and 408 (first judgment).

No. 02–8699. RICHARDSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 90.

No. 02–8700. REAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 647.

No. 02–8705. CAMACHO-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8707. OWENS-EL *v.* HEDRICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–8708. CRISP *v.* UNITED STATES; and RUSSELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407 (first judgment) and 408 (second judgment).

No. 02–8709. CASTRO-CARDONA, AKA BRAVO-DOMINGUEZ *v.* UNITED STATES; CONDE-COVARRUBIAS *v.* UNITED STATES; DE LA TORRE-ALMEIDA *v.* UNITED STATES; GUERRERO-CASTILLO *v.* UNITED STATES; ROSALES-RODRIGUEZ *v.* UNITED STATES; and VERGARA-ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8710. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 405.

No. 02–8712. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 306 F. 3d 231.

No. 02–8713. CARNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 309 F. 3d 950.

No. 02–8715. PENA-MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8718. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 308 F. 3d 425.

No. 02–8721. BOUMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 280.

No. 02–8722. RANGEL DE AGUILAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 308 F. 3d 1134.

No. 02–8724. BLAIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 685.

No. 02–8730. ALMARAZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 306 F. 3d 1031.

No. 02–8740. ARRINGTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 309 F. 3d 40.

No. 02–8743. JENNINGS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 405.

No. 02–8749. WESLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 55 Fed. Appx. 47.

No. 02–8759. FISHER *v.* CASTERLINE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 797.

No. 02–8763. BASS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 315 F. 3d 561.

No. 02–8765. BERNDT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–8766. PENA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 405.

No. 02–8768. WESSON *v.* CHANDLER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 305 F. 3d 343.

No. 02–8771. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 30 Fed. Appx. 685.

No. 02–8774. IGEIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 50 Fed. Appx. 560.

No. 02–8776. LOZA-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 405.

No. 02–8777. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8779. MAYDAK *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 52 Fed. Appx. 188.

No. 02–8780. TIJERINA-QUEZADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 406.

No. 02–8781. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 749.

No. 02–8782. HOLGUIN HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 313 F. 3d 882.

No. 02–8784. WESLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8789. DIMODICA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 41.

No. 02–8793. CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–8796. JOHNSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 297 F. 3d 845.

No. 02–8797. SALAZAR-AVILA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407.

No. 02–8798. STAMPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8799. REYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 488.

No. 02–8803. PENA *v.* UNITED STATES; BARRERA-HERNANDEZ *v.* UNITED STATES; GARZA-GARZA *v.* UNITED STATES; ALVARADO-LOPEZ *v.* UNITED STATES; GARCIA-HERNANDEZ *v.* UNITED STATES; and CARBAJAL-SANTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407 (first, fifth, and sixth judgments) and 409 (second, third, and fourth judgments).

No. 02–8804. Barraza-Carrillo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407.

No. 02–8806. Anderson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 104.

No. 02–8808. Rainey *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 648.

No. 02–8811. Milliken *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407.

No. 02–8812. Smith *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–8813. Cherry *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8815. Estrada-Zea *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8816. Dorsey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 407.

No. 02–8821. Marquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8826. Ruiz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8827. Stearns *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8829. Araujo-Soriano *v.* United States; Munoz-Garcia *v.* United States; and Zapata-Andrade *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8835. Carranza-Maldonado, aka Acuna-Maldonado *v.* United States; Hurtado-Bernal, aka Martinez-Orozco, aka Hurtado *v.* United States; Martell-Manzanera *v.* United States; Perez-Castillo *v.* United States; Roacho-Solis, aka Roacho *v.* United States; Robles-Robles *v.* United States; Teran-Barcoa, aka Teran-Barco, aka Perez-Ortega *v.* United States; and

VALDEZ-DE LA PAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8841. BULLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 912.

No. 02–8842. ALAMILLA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 02–8844. ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8851. MIRANDA-RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 309 F. 3d 1255.

No. 02–8854. LOPEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 309 F. 3d 966.

No. 02–8873. WINGATE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–8881. HARRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 313 F. 3d 1228.

No. 02–8882. HOPPE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 888.

No. 02–8883. CARSAREZ HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 409.

No. 02–8884. HERNANDEZ-ABREGO *v.* UNITED STATES (Reported below: 54 Fed. Appx. 408); MARTINEZ-MONTES *v.* UNITED STATES (54 Fed. Appx. 409); BARRERA-MORALES *v.* UNITED STATES (54 Fed. Appx. 408); CHAVEZ-JACINTO *v.* UNITED STATES (54 Fed. Appx. 407); MARROQUIN-ALCANTARA *v.* UNITED STATES (54 Fed. Appx. 407); GARCIA-MATA *v.* UNITED STATES (54 Fed. Appx. 409); CRUZ-SOTO *v.* UNITED STATES (54 Fed. Appx. 407); ESTRADA-AGUIRRE, AKA SOLORZANO-JOAQUIN *v.* UNITED STATES (54 Fed. Appx. 407); HERNANDEZ-NAJERA *v.* UNITED STATES (54 Fed. Appx. 414); MENDEZ-PAIZ *v.* UNITED STATES (54 Fed. Appx. 591); and REYES-GOMEZ *v.* UNITED STATES (54 Fed. Appx. 591). C. A. 5th Cir. Certiorari denied.

No. 02–8891. MEAIS, AKA BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 182.

No. 02–8894. D'SA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 490.

No. 02–8896. ROSALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–8907. HINOJOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–674. GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY *v.* MENDEZ. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 303 F. 3d 411.

No. 02–798. FABRI-CENTERS OF AMERICA, INC. *v.* CHAO, SECRETARY OF LABOR. C. A. 6th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 308 F. 3d 580.

Rehearing Denied

No. 01–10998. GILCHRIST *v.* ALLEN, SUPERINTENDENT, MASSACHUSETTS CORRECTION INSTITUTION-CEDAR JUNCTION, *ante*, p. 875;

No. 02–579. MCDERMOTT *v.* MOORE ET AL., *ante*, p. 1148;

No. 02–694. JOHNSON ET VIR *v.* EMERALD GREENS PROPERTY OWNERS ASSOCIATION BOARD OF DIRECTORS ET AL., *ante*, p. 1109;

No. 02–6963. KELCH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1116;

No. 02–7062. MOSS *v.* HOFBAUER, WARDEN, *ante*, p. 1092; and

No. 02–7260. MOON *v.* HEAD, WARDEN, *ante*, p. 1124. Petitions for rehearing denied.

No. 02–6743. LYNCH *v.* NATIONAL CITY MORTGAGE, *ante*, p. 1083. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 27, 2003

EFFECTIVE MAY 1, 2003

The following are the Rules of the Supreme Court of the United States as revised on January 27, 2003. See *post*, p. 1248. The amended Rules became effective May 1, 2003, as provided in Rule 48, *post*, p. 1306.

For previous revisions of the Rules of the Supreme Court see 346 U. S. 949, 388 U. S. 931, 398 U. S. 1013, 445 U. S. 985, 493 U. S. 1099, 515 U. S. 1197, 519 U. S. 1161, and 525 U. S. 1191.

ORDER ADOPTING REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

MONDAY, JANUARY 27, 2003

IT IS ORDERED that the revised Rules of this Court, today approved by the Court and lodged with the Clerk, shall be effective May 1, 2003, and be printed as an appendix to the United States Reports.

IT IS FURTHER ORDERED that the Rules promulgated January 11, 1999, see 525 U. S. 1193, shall be rescinded as of April 30, 2003, and that the revised Rules shall govern all proceedings in cases commenced after that date and, to the extent feasible and just, cases then pending.

RULES OF THE SUPREME COURT OF THE UNITED STATES

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RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 27, 2003—EFFECTIVE MAY 1, 2003

PART I. THE COURT

Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

2. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of proceedings in this Court, original records and documents transmitted to this Court by any other court will be returned to the court from which they were received.

3. Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U. S. C. § 6103.

Rule 2. Library

1. The Court's library is available for use by appropriate personnel of this Court, members of the Bar of this Court, Members of Congress and their legal staffs, and attorneys for the United States and for federal departments and agencies.

2. The library's hours are governed by regulations made by the Librarian with the approval of the Chief Justice or the Court.

3. Library books may not be removed from the Court building, except by a Justice or a member of a Justice's staff.

Rule 3. Term

The Court holds a continuous annual Term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. See 28 U. S. C. § 2. At the end of each Term, all cases pending on the docket are continued to the next Term.

Rule 4. Sessions and Quorum

1. Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless it orders otherwise, the Court sits to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

2. Six Members of the Court constitute a quorum. See 28 U. S. C. § 1. In the absence of a quorum on any day appointed for holding a session of the Court, the Justices attending—or if no Justice is present, the Clerk or a Deputy Clerk—may announce that the Court will not meet until there is a quorum.

3. When appropriate, the Court will direct the Clerk or the Marshal to announce recesses.

Part II. Attorneys and Counselors

Rule 5. Admission to the Bar

1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character.

2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a

completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement, and (b) the statement of two sponsors endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character. Both sponsors must be members of the Bar of this Court who personally know, but are not related to, the applicant.

3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation and paid the required fee, the Clerk will notify the applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

4. Each applicant shall sign the following oath or affirmation: I, ..., do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

5. The fee for admission to the Bar and a certificate bearing the seal of the Court is $100, payable to the United States Supreme Court. The Marshal will deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

6. The fee for a duplicate certificate of admission to the Bar bearing the seal of the Court is $15, and the fee for a certificate of good standing is $10, payable to the United States Supreme Court. The proceeds will be maintained by the Marshal as provided in paragraph 5 of this Rule.

Rule 6. Argument *Pro Hac Vice*

1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but

otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice.*

2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice.*

3. Oral argument *pro hac vice* is allowed only on motion of the counsel of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice.* It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed, and it shall be accompanied by proof of service as required by Rule 29.

Rule 7. Prohibition Against Practice

No employee of this Court shall practice as an attorney or counselor in any court or before any agency of government while employed by the Court; nor shall any person after leaving such employment participate in any professional capacity in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate in any professional capacity in any case that was pending in this Court during the employee's tenure.

Rule 8. Disbarment and Disciplinary Action

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who

is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified.

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

Part III. Jurisdiction on Writ of Certiorari

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that

conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis.* A copy of the motion shall pre-

cede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion.

3. Whether prepared under Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and shall be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the petitioner's duty to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. A petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.

5. No more than 30 days after a case has been placed on the docket, a respondent seeking to file a conditional cross-petition (*i. e.*, a cross-petition that otherwise would be untimely) shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding *in forma pauperis* under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that material already reproduced in the appendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38(a) docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-

petition then will be placed on the docket, subject to the provisions of Rule 13.4. It is the cross-petitioner's duty to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a conditional cross-petition will not be extended.

6. All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that a response supporting the petition shall be filed within 20 days after the case is placed on the docket, and that time will not be extended. Parties who file no document will not qualify for any relief from this Court.

7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated por-

tions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

Rule 13. Review on Certiorari: Time for Petitioning

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, *e. g.*, 28 U. S. C. § 2101(c).

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross-petition (which except for Rule 12.5 would be untimely)

will not be granted unless another party's timely petition for a writ of certiorari is granted.

5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

Rule 14. Content of a Petition for a Writ of Certiorari

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation "capital case" shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), and a corporate disclosure statement as required by Rule 29.6.

(c) If the petition exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

(i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11);

(ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;

(iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and

(v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i).

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or sum-

mary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the order indicated:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) material required by subparagraphs 1(f) or 1(g)(i); and

(vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely.

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished

that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent may file an original and 10 copies of a brief in opposition prepared as required by Rule 33.2. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply

brief to the Court for its consideration no less than 10 days after the brief in opposition is filed.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

Rule 16. Disposition of a Petition for a Writ of Certiorari

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will

request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

Part IV. Other Jurisdiction

Rule 17. Procedure in an Original Action

1. This Rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U. S. C. § 1251 and U. S. Const., Amdt. 11. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20.

2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed. In other respects, those Rules and the Federal Rules of Evidence may be taken as guides.

3. The initial pleading shall be preceded by a motion for leave to file, and may be accompanied by a brief in support of the motion. Forty copies of each document shall be filed, with proof of service. Service shall be as required by Rule 29, except that when an adverse party is a State, service shall be made on both the Governor and the Attorney General of that State.

4. The case will be placed on the docket when the motion for leave to file and the initial pleading are filed with the Clerk. The Rule 38(a) docket fee shall be paid at that time.

5. No more than 60 days after receiving the motion for leave to file and the initial pleading, an adverse party shall file 40 copies of any brief in opposition to the motion, with proof of service as required by Rule 29. The Clerk will dis-

tribute the filed documents to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the filed documents to the Court for its consideration no less than 10 days after the brief in opposition is filed. A reply brief may be filed, but consideration of the case will not be deferred pending its receipt. The Court thereafter may grant or deny the motion, set it for oral argument, direct that additional documents be filed, or require that other proceedings be conducted.

6. A summons issued out of this Court shall be served on the defendant 60 days before the return day specified therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte*.

7. Process against a State issued out of this Court shall be served on both the Governor and the Attorney General of that State.

Rule 18. Appeal from a United States District Court

1. When a direct appeal from a decision of a United States district court is authorized by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law after entry of the judgment sought to be reviewed. The time to file may not be extended. The notice of appeal shall specify the parties taking the appeal, designate the judgment, or part thereof, appealed from and the date of its entry, and specify the statute or statutes under which the appeal is taken. A copy of the notice of appeal shall be served on all parties to the proceeding as required by Rule 29, and proof of service shall be filed in the district court together with the notice of appeal.

2. All parties to the proceeding in the district court are deemed parties entitled to file documents in this Court, but a party having no interest in the outcome of the appeal may so notify the Clerk of this Court and shall serve a copy of the notice on all other parties. Parties interested jointly,

severally, or otherwise in the judgment may appeal separately, or any two or more may join in an appeal. When two or more judgments involving identical or closely related questions are sought to be reviewed on appeal from the same court, a notice of appeal for each judgment shall be filed with the clerk of the district court, but a single jurisdictional statement covering all the judgments suffices. Parties who file no document will not qualify for any relief from this Court.

3. No more than 60 days after filing the notice of appeal in the district court, the appellant shall file 40 copies of a jurisdictional statement and shall pay the Rule 38 docket fee, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the jurisdictional statement. The jurisdictional statement shall follow, insofar as applicable, the form for a petition for a writ of certiorari prescribed by Rule 14, and shall be served as required by Rule 29. The case will then be placed on the docket. It is the appellant's duty to notify all appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29. The appendix shall include a copy of the notice of appeal showing the date it was filed in the district court. For good cause, a Justice may extend the time to file a jurisdictional statement for a period not exceeding 60 days. An application to extend the time to file a jurisdictional statement shall set out the basis for jurisdiction in this Court; identify the judgment sought to be reviewed; include a copy of the opinion, any order respecting rehearing, and the notice of appeal; and set out specific reasons why an extension of time is justified. For the time and manner of presenting the application, see Rules 21, 22, and 30. An application to extend the time to file a jurisdictional statement is not favored.

4. No more than 30 days after a case has been placed on the docket, an appellee seeking to file a conditional cross-appeal (*i. e.*, a cross-appeal that otherwise would be untimely) shall file, with proof of service as required by Rule 29, a jurisdictional statement that complies in all respects (including number of copies filed) with paragraph 3 of this Rule, except that material already reproduced in the appendix to the opening jurisdictional statement need not be reproduced again. A cross-appealing appellee shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-appeal shall indicate clearly that it is a conditional cross-appeal. The cross-appeal then will be placed on the docket. It is the cross-appellant's duty to notify all cross-appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-appeal was placed on the docket, and the docket number of the cross-appeal. The notice shall be served as required by Rule 29. A cross-appeal may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-appeal will not be extended.

5. After a notice of appeal has been filed in the district court, but before the case is placed on this Court's docket, the parties may dismiss the appeal by stipulation filed in the district court, or the district court may dismiss the appeal on the appellant's motion, with notice to all parties. If a notice of appeal has been filed, but the case has not been placed on this Court's docket within the time prescribed for docketing, the district court may dismiss the appeal on the appellee's motion, with notice to all parties, and may make any just order with respect to costs. If the district court has denied the appellee's motion to dismiss the appeal, the appellee may move this Court to docket and dismiss the appeal by filing an original and 10 copies of a motion presented in conformity with Rules 21 and 33.2. The motion shall be accompanied by proof of service as required by Rule 29, and by a certificate from the clerk of the district court, certifying that a notice of appeal was filed and that the appellee's mo-

tion to dismiss was denied. The appellant may not thereafter file a jurisdictional statement without special leave of the Court, and the Court may allow costs against the appellant.

6. Within 30 days after the case is placed on this Court's docket, the appellee may file a motion to dismiss, to affirm, or in the alternative to affirm or dismiss. Forty copies of the motion shall be filed, except that an appellee proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rule 21.

7. The Clerk will distribute the jurisdictional statement to the Court for its consideration upon receiving an express waiver of the right to file a motion to dismiss or to affirm or, if no waiver or motion is filed, upon the expiration of the time allowed for filing. If a motion to dismiss or to affirm is timely filed, the Clerk will distribute the jurisdictional statement, motion, and any brief opposing the motion to the Court for its consideration no less than 10 days after the motion is filed.

8. Any appellant may file a brief opposing a motion to dismiss or to affirm, but distribution and consideration by the Court under paragraph 7 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The brief shall be served as required by Rule 29.

9. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be deferred until the cross-appeal is due for distribution under this Rule.

10. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention

to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

11. The clerk of the district court shall retain possession of the record until notified by the Clerk of this Court to certify and transmit it. See Rule 12.7.

12. After considering the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone consideration of jurisdiction until a hearing of the case on the merits. If not disposed of summarily, the case stands for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed in this Court, the Clerk of this Court will request the clerk of the court in possession of the record to certify and transmit it.

13. If the Clerk determines that a jurisdictional statement submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. If a corrected jurisdictional statement is received no more than 60 days after the date of the Clerk's letter, its filing will be deemed timely.

Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises.

Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2).

3. When a question is certified, the Clerk will notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk will submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs. The Clerk of this Court then will request the clerk of the court in possession of the record to certify and transmit it. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix, prepared in conformity with Rule 26 by the appellant or petitioner in the court of appeals, but the fact that any part of the record has not been printed does not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case involving a certified question shall comply with Rules 24, 25, and 33.1, except that the brief for the party who is the appellant or petitioner below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be

in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U. S. C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by let-

ter. All persons served are deemed respondents for all purposes in the proceedings in this Court.

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U. S. C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

Part V. Motions and Applications

Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any

asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.

2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. § 2101(f).

3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.

4. A judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond will be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

Part VI. Briefs on the Merits and Oral Argument

Rule 24. Briefs on the Merits: In General

1. A brief on the merits for a petitioner or an appellant shall comply in all respects with Rules 33.1 and 34 and shall contain in the order here indicated:

(a) The questions presented for review under Rule 14.1(a). The questions shall be set out on the first page following the cover, and no other information may appear on that page. The phrasing of the questions presented need not be identical with that in the petition for a writ of certiorari or the jurisdictional statement, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide.

(b) A list of all parties to the proceeding in the court whose judgment is under review (unless the caption of the case in this Court contains the names of all parties). Any amended corporate disclosure statement as required by Rule 29.6 shall be placed here.

(c) If the brief exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts and administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, including the statutory provisions and time factors on which jurisdiction rests.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text, if not already set out in the petition for a writ of certiorari, jurisdictional statement, or an appendix to either document, shall be set out in an appendix to the brief.

(g) A concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, *e. g.*, App. 12, or to the record, *e. g.*, Record 12.

(h) A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition

of the headings under which the argument is arranged is not sufficient.

(i) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.

(j) A conclusion specifying with particularity the relief the party seeks.

2. A brief on the merits for a respondent or an appellee shall conform to the foregoing requirements, except that items required by subparagraphs 1(a), (b), (d), (e), (f), and (g) of this Rule need not be included unless the respondent or appellee is dissatisfied with their presentation by the opposing party.

3. A brief on the merits may not exceed the page limitations specified in Rule 33.1(g). An appendix to a brief may include only relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set out in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and at which it was ruled on by the judge shall be indicated, *e. g.*, Pl. Exh. 14, Record 199, 2134.

6. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.

Rule 25. Briefs on the Merits: Number of Copies and Time to File

1. The petitioner or appellant shall file 40 copies of the brief on the merits within 45 days of the order granting the writ of certiorari, noting probable jurisdiction, or postponing

consideration of jurisdiction. Any respondent or appellee who supports the petitioner or appellant shall meet the petitioner's or appellant's time schedule for filing documents.

2. The respondent or appellee shall file 40 copies of the brief on the merits within 35 days after the brief for the petitioner or appellant is filed.

3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 35 days after the brief for the respondent or appellee is filed, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

4. The time periods stated in paragraphs 1 and 2 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

5. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

6. After a case has been argued or submitted, the Clerk will not file any brief, except that of a party filed by leave of the Court.

7. The Clerk will not file any brief that is not accompanied by proof of service as required by Rule 29.

Rule 26. Joint Appendix

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file

40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, within 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. Within 10 days after receiving the designation, a respondent or appellee who considers the parts of the record so designated insufficient shall serve on the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the Court has permitted the respondent or appellee to proceed *in forma pauperis,* the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices, and counsel may refer in briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant immediately shall file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the statement on each of the other parties as required by Rule 29. Unless the parties agree otherwise, the cost of producing the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the joint appendix is taxed as a cost in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

4. (a) On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix no more than 14 days after receiving the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may refer to the pages of the record. In that event, the joint appendix shall include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief prepared as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be

made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out, with references to the pages of the joint appendix at which each part begins. The relevant docket entries shall be set out after the table of contents, followed by the other parts of the record in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (*e. g.*, captions, subscriptions, acknowledgments) shall be omitted. A question and its answer may be contained in a single paragraph.

6. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals is regarded as an exhibit for the purposes of this paragraph.

7. The Court, on its own motion or that of a party, may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

8. For good cause, the time limits specified in this Rule may be shortened or extended by the Court or a Justice, or by the Clerk under Rule 30.4.

Rule 27. Calendar

1. From time to time, the Clerk will prepare a calendar of cases ready for argument. A case ordinarily will not be called for argument less than two weeks after the brief on the merits for the respondent or appellee is due.

2. The Clerk will advise counsel when they are required to appear for oral argument and will publish a hearing list in advance of each argument session for the convenience of counsel and the information of the public.

3. The Court, on its own motion or that of a party, may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as the Court may prescribe.

Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favored.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless the Court directs otherwise, each side is allowed one-half hour for argument. Counsel is not required to use all the allotted time. Any request for additional time to argue shall be presented by motion under Rule 21 no more than 15 days after the petitioner's or appellant's brief on the merits is filed, and shall set out specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of the Court on motion filed no more than 15 days after the respondent's or appellee's brief on the merits is filed. Any request for divided argument shall be presented by motion under Rule 21 and shall set out specifically and concisely why more than one attorney should be allowed to argue. Divided argument is not favored.

5. Regardless of the number of counsel participating in oral argument, counsel making the opening argument shall

present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may seek leave of the Court to argue orally by a motion setting out specifically and concisely why oral argument would provide assistance to the Court not otherwise available. Such a motion will be granted only in the most extraordinary circumstances.

Part VII. Practice and Procedure

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk.

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the

document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

3. Any document required by these Rules to be served may be served personally, by mail, or by third-party commercial carrier for delivery within 3 calendar days on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail or third-party commercial carrier, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, or delivery to the carrier for delivery within 3 calendar days, addressed to counsel of record at the proper address. When a party is not represented by counsel, service shall be made on the party, personally, by mail, or by commercial carrier. Ordinarily, service on a party must be by a manner at least as expeditious as the manner used to file the document with the Court.

4. (a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office,

agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute.

6. Every document, except a joint appendix or *amicus curiae* brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identifying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed.

Rule 30. Computation and Extension of Time

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U. S. C. § 6103, or day on which the Court building is closed by order of the

Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be filed at least 10 days before the specified final filing date as computed under these Rules; if filed less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. An application to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The application may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

Rule 31. Translations

Whenever any record to be transmitted to this Court contains material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so

that this Court may order that a translation be supplied and, if necessary, printed as part of the joint appendix.

Rule 32. Models, Diagrams, Exhibits, and Lodgings

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, exhibits, and other items placed in the custody of the Clerk shall be removed by the parties no more than 40 days after the case is decided. If this is not done, the Clerk will notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or dispose of them in any other appropriate way.

3. Any party or *amicus curiae* desiring to lodge non-record material with the Clerk must set out in a letter, served on all parties, a description of the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court. The material proposed for lodging may not be submitted until and unless requested by the Clerk.

Rule 33. Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format

1. *Booklet Format:* (a) Except for a document expressly permitted by these Rules to be submitted on 8½- by 11-inch paper, see, *e. g.*, Rules 21, 22, and 39, every document filed with the Court shall be prepared in a 6⅛- by 9¼-inch booklet format using a standard typesetting process (*e. g.*, hot metal, photocomposition, or computer typesetting) to produce text printed in typographic (as opposed to typewritten) characters. The process used must produce a clear, black image on white paper. The text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(b) The text of every booklet-format document, including any appendix thereto, shall be typeset in Roman 11-point or larger type with 2-point or more leading between lines. The

typeface should be similar to that used in current volumes of the United States Reports. Increasing the amount of text by using condensed or thinner typefaces, or by reducing the space between letters, is strictly prohibited. Type size and face shall be consistent throughout. Quotations in excess of 50 words shall be indented. The typeface of footnotes shall be 9-point or larger with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4⅛ by 7⅛ inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, or string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every booklet-format document shall comply with the page limits shown on the chart in subparagraph 1(g) of this Rule. The page limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, or any appendix. Verbatim quotations required under Rule 14.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the page limits, but application for such leave is not favored. An application to exceed page limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every booklet-format document shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a

separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a booklet-format document shall be filed.

(g) Page limits and cover colors for booklet-format documents are as follows:

	Type of Document	Page Limits	Color of Cover
(i)	Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)	30	white
(ii)	Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4)	30	orange
(iii)	Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)	10	tan
(iv)	Supplemental Brief (Rules 15.8, 17, 18.10, and 25.5)	10	tan
(v)	Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	50	light blue
(vi)	Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	50	light red
(vii)	Reply Brief on the Merits (Rule 24.4)	20	yellow
(viii)	Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17)	50	orange

	Type of Document	Page Limits	Color of Cover
(ix)	Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	50	yellow
(x)	Brief for an *Amicus Curiae* at the Petition Stage (Rule 37.2)	20	cream
(xi)	Brief for an *Amicus Curiae* in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	30	light green
(xii)	Brief for an *Amicus Curiae* in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	30	dark green
(xiii)	Petition for Rehearing (Rule 44)	10	tan

2. *8½- by 11-Inch Paper Format:* (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. §3006A(d)(6), or under any other applicable federal statute. Subparagraph 1(g) of this Rule does not apply to documents prepared under this paragraph.

(b) Page limits for documents presented on 8½- by 11-inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The page exclusions specified in subparagraph 1(d) of this Rule apply.

Rule 34. Document Preparation: General Requirements

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

(a) the docket number of the case or, if there is none, a space for one;

(b) the name of this Court;

(c) the caption of the case as appropriate in this Court;

(d) the nature of the proceeding and the name of the court from which the action is brought (*e. g.*, "On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");

(e) the title of the document (*e. g.*, "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");

(f) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 33.2), and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address and telephone number. Only one counsel of record may be noted on a single document. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se*, in which case the party's name, address, and telephone number shall appear. The foregoing shall be displayed in an appropriate typographic manner and, except for the identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

2. Every document exceeding five pages (other than a joint appendix), whether prepared under Rule 33.1 or Rule 33.2, shall contain a table of contents and a table of cited authorities (*i. e.*, cases alphabetically arranged, constitutional provi-

sions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited.

3. The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with subparagraph 1(g) of this Rule, as may be desired.

Rule 35. Death, Substitution, and Revivor; Public Officers

1. If a party dies after the filing of a petition for a writ of certiorari to this Court, or after the filing of a notice of appeal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, is entitled to have the petition for a writ of certiorari or the appeal dismissed, and if a petitioner or appellant, is entitled to proceed as in any other case of nonappearance by a respondent or appellee. If the substitution of a representative of the deceased is not made within six months after the death of the party, the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed, because the deceased party's authorized representative is not subject to that court's jurisdiction, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.

Rule 36. Custody of Prisoners in Habeas Corpus Proceedings

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian, the court, Justice, or judge who entered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3. (a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged on personal recognizance or bail, unless the court, Justice, or judge who entered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.

Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its atten-

tion by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

2. (a) An *amicus curiae* brief submitted before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ, may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 2(b) of this Rule. The brief shall be submitted within the time allowed for filing a brief in opposition or for filing a motion to dismiss or affirm. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported.

(b) When a party to the case has withheld consent, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest. Such a motion is not favored.

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 3(b) of this Rule. The brief shall be submitted within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

(b) When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest.

4. No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

5. A brief or motion filed under this Rule shall be accompanied by proof of service as required by Rule 29, and shall comply with the applicable provisions of Rules 21, 24, and 33.1 (except that it suffices to set out in the brief the interest of the *amicus curiae*, the summary of the argument, the argument, and the conclusion). A motion for leave to file may not exceed five pages. A party served with the motion may file an objection thereto, stating concisely the reasons for withholding consent; the objection shall be prepared as required by Rule 33.2.

6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and shall identify every person or entity, other than the *amicus curiae*, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. The disclosure shall be made in the first footnote on the first page of text.

Rule 38. Fees

Under 28 U. S. C. § 1911, the fees charged by the Clerk are:

(a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, $300;

(b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200;

(c) for reproducing and certifying any record or paper, $1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, $.50 per page;

(d) for a certificate bearing the seal of the Court, $10; and

(e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, $35.

Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or under any other applicable federal statute, no affidavit or declaration is required, but the motion shall cite the statute under which counsel was appointed.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the

original, alone, suffices. A copy of the motion, and affidavit or declaration if required, shall precede and be attached to each copy of the accompanying document.

3. Except when these Rules expressly provide that a document shall be prepared as required by Rule 33.1, every document presented by a party proceeding under this Rule shall be prepared as required by Rule 33.2 (unless such preparation is impossible). Every document shall be legible. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will not file any document if it does not comply with the substance of these Rules or is jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they will be placed on the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, suffices. The respondent or appellee may challenge the grounds for the motion for leave to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs on the merits submitted by that counsel, unless otherwise requested, shall be prepared under the Clerk's supervision. The Clerk also will reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction 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, 18 U. S. C. § 3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis.*

Rule 40. Veterans, Seamen, and Military Cases

1. A veteran suing to establish reemployment rights under any provision of law exempting veterans from the payment of fees or court costs, may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied by an affidavit or declaration setting out the moving party's veteran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor, but is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U. S. C. § 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed on papers prepared as required by Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

Part VIII. Disposition of Cases

Rule 41. Opinions of the Court

Opinions of the Court will be released by the Clerk immediately upon their announcement from the bench, or as the Court otherwise directs. Thereafter, the Clerk will cause the opinions to be issued in slip form, and the Reporter of Decisions will prepare them for publication in the preliminary prints and bound volumes of the United States Reports.

Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

Rule 43. Costs

1. If the Court affirms a judgment, the petitioner or appellant shall pay costs unless the Court otherwise orders.

2. If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders.

3. The Clerk's fees and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs are equally divided unless the Court otherwise orders, except that if the Court decides the whole matter in controversy, as permitted by Rule 19.2, costs are allowed as provided in paragraphs 1 and 2 of this Rule.

5. To the extent permitted by 28 U. S. C. § 2412, costs under this Rule are allowed for or against the United States or an officer or agent thereof, unless expressly waived or unless the Court otherwise orders.

6. When costs are allowed in this Court, the Clerk will insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

Rule 44. Rehearing

1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening

circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

3. The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response.

4. The Clerk will not file consecutive petitions and petitions that are out of time under this Rule.

5. The Clerk will not file any brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

6. If the Clerk determines that a petition for rehearing submitted timely and in good faith is in a form that does not comply with the Rule or Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition for rehearing received no more than 15 days after the date of the Clerk's letter will be deemed timely.

Rule 45. Process; Mandates

1. All process of this Court issues in the name of the President of the United States.

2. In a case on review from a state court, the mandate issues 25 days after entry of the judgment, unless the Court or a Justice shortens or extends the time, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing stays the mandate until disposition of the petition, unless the Court orders otherwise. If the petition is denied, the mandate issues forthwith.

3. In a case on review from any court of the United States, as defined by 28 U. S. C. § 451, a formal mandate does not issue unless specially directed; instead, the Clerk of this Court will send the clerk of the lower court a copy of the opinion or order of this Court and a certified copy of the judgment. The certified copy of the judgment, prepared and signed by this Court's Clerk, will provide for costs if any are awarded. In all other respects, the provisions of paragraph 2 of this Rule apply.

Rule 46. Dismissing Cases

1. At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then due, the Clerk, without further reference to the Court, will enter an order of dismissal.

2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, tendering to the Clerk any fees due and costs payable. No more than 15 days after service thereof, an adverse party may file an objection, limited to the amount of damages and costs in this Court alleged to be payable or to showing that the moving party does not represent all petitioners or appellants. The Clerk will not file any objection not so limited.

(b) When the objection asserts that the moving party does not represent all the petitioners or appellants, the party moving for dismissal may file a reply within 10 days, after which time the matter will be submitted to the Court for its determination.

(c) If no objection is filed—or if upon objection going only to the amount of damages and costs in this Court, the party moving for dismissal tenders the additional damages and costs in full within 10 days of the demand therefor—the Clerk, without further reference to the Court, will enter an order of dismissal. If, after objection as to the amount of damages and costs in this Court, the moving party does not respond by a tender within 10 days, the Clerk will report the matter to the Court for its determination.

3. No mandate or other process will issue on a dismissal under this Rule without an order of the Court.

Part IX. Definitions and Effective Date

Rule 47. Reference to "State Court" and "State Law"

The term "state court," when used in these Rules, includes the District of Columbia Court of Appeals and the Supreme Court of the Commonwealth of Puerto Rico. See 28 U. S. C. §§ 1257 and 1258. References in these Rules to the common law and statutes of a State include the common law and statutes of the District of Columbia and of the Commonwealth of Puerto Rico.

Rule 48. Effective Date of Rules

1. These Rules, adopted January 27, 2003, will be effective May 1, 2003.

2. The Rules govern all proceedings after their effective date except to the extent that, in the opinion of the Court, their application to a pending matter would not be feasible or would work an injustice, in which event the former procedure applies.

INDEX TO RULES

BUILDING REGULATIONS OF THE SUPREME COURT OF THE UNITED STATES

The following is a compilation of the six Regulations currently in effect, issued pursuant to 40 U. S. C. § 6102, that govern the building and grounds of the Supreme Court of the United States. These Regulations were prescribed by the Marshal of the Supreme Court and approved by the Chief Justice of the United States as of the effective date noted on each Regulation.

BUILDING REGULATIONS OF THE SUPREME COURT OF THE UNITED STATES

NOTICE

Pursuant to the authority and responsibilities set forth in 40 U. S. C. § 6102, the following regulations governing the Supreme Court building and grounds were prescribed by the Marshal and approved by THE CHIEF JUSTICE of the United States.

REGULATION ONE

Subject: Public hours of the United States Supreme Court.

1. PURPOSE:

To prescribe hours that the Supreme Court building is open to the public.

2. AUTHORITY:

Subject to the approval of THE CHIEF JUSTICE, the Marshal may promulgate regulations as provided for under 40 U. S. C. § 6102, as amended.

3. POLICY:

The Supreme Court building at 1 First Street, N. E., Washington, D. C. 20543, is open to the public Monday through Friday, from 9:00 a.m. to 4:30 p.m., except on federal holidays. The building is closed at all other times, although persons having legitimate business may be admitted at other times when so authorized by responsible officials.

Approved and Effective September 29, 1994

REGULATION TWO

In order to protect the Supreme Court building and grounds, to protect the persons and property therein, or to maintain suitable order and decorum, the Marshal of the Supreme Court, pursuant to the responsibilities outlined in 40 U. S. C. § 6102, may, at any time, declare the Supreme Court building and grounds, or any portion thereof, closed to the general public. Any person who, having been informed of the closure of the building or grounds or portion of the building or grounds, enters the closed area without the authorization of the Marshal or refuses to leave the closed area after being requested to do so shall be subject to arrest and subject to penalties set forth in 40 U. S. C. § 6137.

Approved and Effective October 4, 1994

REGULATION THREE

(A) Except as authorized by the Marshal, it shall be unlawful for any person, within the Supreme Court building or upon the Supreme Court grounds, to carry or have readily available to the person, any:

(1) "firearm," as that term is defined by 18 U. S. C. § 921(3);

(2) "explosive or incendiary device," as those terms are defined by 18 U. S. C. §§ 844(j) and 232(5);

(3) "dangerous weapon," as that term is defined in 40 U. S. C. § 193m(3), or District of Columbia Code §§ 10–503.26(3) and 22–4514; or

(4) other substance, material, or other item that may pose a danger to Court property or the safety of the Justices, Court employees, guests, or the general public.

(B) Officers of the Supreme Court police shall have the authority to deny entry to, or expel from the Supreme Court building or grounds any person whose presence would violate subsection (A).

(C) This Regulation is promulgated pursuant to 40 U. S. C. §§ 6102 and 6121. Any person failing to comply with this Regulation, including a person who fails to comply with a valid order from a Supreme Court police officer under subsection (B), shall be prosecuted under 40 U. S. C. § 6137.

Approved and Effective September 23, 1994
(Amended September 6, 2002)

REGULATION FOUR

This Regulation is issued under authority of 40 U. S. C. § 6102 for the protection of the Supreme Court building and grounds and persons and property therein, and for the maintenance of suitable order and decorum of the Court, and enforces the provisions of 40 U. S. C. §§ 6131 and 6133. Any person who fails to comply with this Regulation may be subject to a fine and/or imprisonment pursuant to 40 U. S. C. § 6137.

No person who owns or has custody of a dog (hereinafter "Owner") shall permit the dog to be on Supreme Court grounds unless the dog is secured by a leash that does not exceed four feet in length.

Owners shall control their dogs and prevent their dogs from harassing or injuring any person on Supreme Court grounds or injuring any statue, seat, wall, fountain or any erection or architectural feature, or tree, shrub, plant or turf on Supreme Court grounds.

Any owner who permits his or her dog to defecate on Supreme Court grounds shall immediately remove the excrement.

No owner shall permit his or her dog to enter the Supreme Court building, unless the owner is disabled and the dog is trained to assist the owner or the owner is a law enforcement officer and the dog is trained and authorized to assist the law enforcement officer.

Approved and Effective November 12, 1999

REGULATION FIVE

This Regulation is issued under authority of 40 U. S. C. § 6102 to protect the Supreme Court building, grounds, and persons and property therein, and to maintain suitable order and decorum within the Supreme Court building and grounds. The Regulation enforces provisions of 40 U. S. C. § 6134. Any person who fails to comply with this Regulation may be subject to a fine and/or imprisonment pursuant to 40 U. S. C. § 6137.

No person shall, on the Supreme Court grounds, create any noise disturbance. For purposes of this Regulation, a noise disturbance is any sound that (1) falls within the definition of "noise disturbance" set forth in 20 D. C. M. R. 20–27–2799; or (2) disturbs or tends to disturb the order and decorum of the Supreme Court or any activities authorized by the Court in the Supreme Court building or on the Supreme Court grounds.

Approved and Effective April 24, 2000

REGULATION SIX

This Regulation is issued under authority of 40 U. S. C. § 6102 to protect the Supreme Court building and grounds, and persons and property thereon, and to maintain suitable order and decorum within the Supreme Court building and grounds. Any person who fails to comply with this Regulation may be subject to a fine and/or imprisonment pursuant to 40 U. S. C. § 6137.

The use of signs on the perimeter sidewalks on the Supreme Court grounds is regulated as follows:

1. No signs shall be allowed except those made of cardboard, posterboard, or cloth.

2. Supports for signs must be entirely made of wood, have dull ends, may not be hollow, and may not exceed ¾ inch at their largest point. There shall be no nails, screws, or bolt-type fastening devices protruding from the wooden supports.

3. Hand-carried signs are allowed regardless of size.

4. Signs that are not hand-carried are allowed only if they are

> (a) no larger than 4 feet in length, 4 feet in width, and ¼ inch in thickness (exclusive of braces that are reasonably required to meet support and safety requirements, as set forth in section 2 above), and not elevated so as to exceed a height of 6 feet above the ground at their highest point;
>
> (b) not used so as to form an enclosure of two or more sides;
>
> (c) attended at all times (attended means that an individual must remain within 3 feet of each sign); and
>
> (d) not arranged in such manner as to create a single sign that exceeds the size limitations in subsection (a).

5. No individual may have more than two non-hand-carried signs at any one time.

Notwithstanding the above, no person shall carry or place any sign in such a manner as to impede pedestrian traffic,

access to and from the Supreme Court plaza or building, or to cause any safety or security hazard to any person.

Approved and Effective April 25, 2000

Reporter's Note

The next page is purposely numbered 1501. The numbers between 1335 and 1501 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.

OPINION OF INDIVIDUAL JUSTICE
IN CHAMBERS

CHABAD OF SOUTHERN OHIO ET AL. *v.* CITY OF CINCINNATI

ON APPLICATION TO VACATE STAY

No. 02A449. Decided November 29, 2002

The Sixth Circuit's stay of a District Court order enjoining enforcement of a Cincinnati ordinance that reserves to the city exclusive use of Fountain Square for seven weeks beginning on this date is vacated. Accepting the construction used by the courts below, the ordinance is significantly broader than a reservation of the exclusive right to erect unattended structures in the square during a high use period. Given the square's historic character as a public forum, under this Court's reasoning in *Capitol Square Review and Advisory Bd.* v. *Pinette*, 515 U. S. 753, the District Court correctly enjoined the city from enforcing those portions of the ordinance giving the city exclusive use of the square for the next seven weeks.

JUSTICE STEVENS, Circuit Justice.

The Court of Appeals for the Sixth Circuit has entered a stay of a District Court order enjoining enforcement of a city of Cincinnati ordinance, and plaintiffs have filed a motion with me as Circuit Justice seeking an order vacating that stay. As did the District Court, the Court of Appeals states that the ordinance in question "reserves the exclusive use of Fountain Square to the City" for the 7-week period beginning today. No. 02–4340 (CA6, Nov. 27, 2002), p. 1. Though the city has filed a narrowing interpretation of this ordinance with me, for the purposes of the present motion I accept the construction of the ordinance by the courts below (who also had the benefit of this narrowing interpretation) even if I might have arrived at a different conclusion without such guidance. See *Bishop* v. *Wood*, 426 U. S. 341, 345–346

(1976). Under the District Court's reading, the ordinance is significantly broader than a reservation of the exclusive right to erect unattended structures in the square during this period of high use, which I assume the city could have reserved to itself. Given the square's historic character as a public forum, under the reasoning in this Court's decision in *Capitol Square Review and Advisory Bd.* v. *Pinette*, 515 U. S. 753 (1995), I think the District Court correctly enjoined the city from enforcing "those portions" of the ordinance "which give the City exclusive use of Fountain Square" for the next seven weeks. No. C–1–02–840 (SD Ohio, Nov. 27, 2002), p. 21. It follows, I believe, that the Court of Appeals' stay should be vacated.

It is so ordered.

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